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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 448

THE UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION, APPELLANTS

vs.

HANCOCK TRUCK LINES, INC.

No. 449

REGULAR COMMON CARRIERS CONFERENCE OF THE
AMERICAN TRUCKING ASSOCIATIONS, INC., APPEL-
LANT

vs.

HANCOCK TRUCK LINES, INC.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA

FILED SEPTEMBER 9, 1944

3

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1 [Caption omitted.]

3 In the District Court of the United States for the
Southern District of Indiana, Indianapolis Division

Civil Cause No. 795

HANCOCK TRUCK LINES, INC., PLAINTIFF

vs.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION,
DEFENDANTS

Complaint for Injunction

Filed March 29, 1944

1.

The plaintiff, Hancock Truck Lines, Inc., complains of the defendants, United States and the Interstate Commerce Commission, and for cause of action herein says:

1. The plaintiff, Hancock Truck Lines, Inc., is a corporation duly organized and existing under the laws of the State of Indiana, and has been such since 1933, with its principal office and place of business in the City of Evansville, Vanderburg County, Indiana, and with an office in the City of Indianapolis, in Marion County, Indiana, and it is a citizen and resident of said District Court for the Southern District of Indiana.

2. The defendant, Interstate Commerce Commission, is a Commission created and established by Congress, having a general regulation, supervision and control over common carriers of property by motor vehicles for hire, with the power and authority to make findings of fact, enter legal and lawful orders, and
4 issue certificates of public convenience and necessity to such common carriers, as is particularly provided for by part II of the Interstate Commerce Act, and the said Interstate Commerce Commission will at times hereinafter be referred to as the Commission.

3. This action arises under the Fifth Amendment to the Constitution of the United States and under the laws of the United States, and more particularly under Section 205 (h) of the Motor Carrier Act of 1935, now Section 205 (g) of Part II of the Interstate Commerce Act (U. S. Code, Sup. 1, Title 49, Section 305 (h)), and under the Acts of Congress, Code of Laws of the United States, Title 28, Section 41 (28), 32 to 48, inclusive. Plaintiff hereby seeks to enjoin, set aside, annul and restrain the enforce-

ment of part of a certain order of the Interstate Commerce Commission, being order No. MC 3339, entitled Globe Cartage Company Inc. Common Carrier Application, which was approved on the 4th day of August 1943, and later modified to become effective on the 31st day of March 1944, and which proceeding is now designated by the Commission as No. MC 25567 (Sub No. 8), Hancock Truck Lines, Inc., successor to Globe Cartage Company Inc.

4. Throughout the period of plaintiff's corporate existence, it has been, and is now, a common carrier by motor vehicles, holding itself out to the general public to engage in the transportation by motor vehicles in interstate and foreign commerce of general commodities, with certain usual exceptions, for compensation, and has been, and is now, the holder of certain certificates of

5 public convenience and necessity issued to it by the defendant, Interstate Commerce Commission, different from the certificate and order of the Commission hereinafter complained of in this complaint, but which are directly related thereto because of the business which the plaintiff is operating pursuant to all of its certificates:

5. Plaintiff further avers that on or about the 29th day of January, 1936, an Indiana corporation known as Globe Cartage Company, Inc., having its general office and principal place of business in Indianapolis, Marion County, Indiana, filed its written application with the defendant, Interstate Commerce Commission, under the grandfather clause of Section 306 of Title 49 U. S. C. A., duly alleging that it was in fact in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the routes and within the territory for which such application was so made by it, and had so operated since that time down to the filing of its said application, such application and proceedings being entitled "Globe Cartage Company, Inc., Common Carrier Application" and bearing No. MC 3339, and wherein it requested said Commission to give and grant unto it a certificate of convenience and necessity, under and pursuant to said grandfather clause, such application for such certificate having been made by said corporation to the Commission in all respects as provided for in Paragraph (b) of Section 206 of Part II of the Interstate Commerce Act aforesaid, and within 120 days after October 1, 1935; that proceedings were had in relation to such application which resulted in a reference of said application to an examiner

6 by said Commission; thereafter, evidence was heard by said Examiner, report was made to the Commission, and under date of October 7, 1942, Division 5 of the defendant, Interstate Commerce Commission, decided that said applicant was

entitled to continue operations as a common carrier by motor vehicle of general commodities between certain points in Illinois, Indiana, Kentucky, Michigan, Missouri, New York, Ohio, and Pennsylvania, over regular routes by reason of having been so engaged on June 1, 1935, and continuously since, a copy of the findings of fact, and the decision of said Division 5, dated October 7, 1942, aforesaid, being filed herewith, marked "Exhibit A," and made a part of this complaint.

6. Said Division No. 5 of the Interstate Commerce Commission made and adopted its special findings of fact, wherein, among other things, it was found by said Division 5 that on June 1, 1935, said Globe Cartage Company, Inc., was, and continuously since had been, in bona fide operation as a common carrier by motor vehicle, in interstate and foreign commerce, over certain of the routes described in said application, particularly described in said findings, which finding of fact is now set out herein as follows:

"We find that on June 1, 1935, applicant was, and continuously since has been, in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, (1) between Chicago, Ill., and St. Louis, Mo., (2) between St. Louis and Cincinnati, Ohio, (3) between Louisville, Ky., and Cincinnati, (4) between Indianapolis, Ind., and Cincinnati (5) between Indianapolis and Cleveland, Ohio, (6) between St. Louis and Dayton, Ohio, (7) between Louisville and Indianapolis, (8) between St. Louis and Louisville, (9) between St. Louis and Cleveland, (10) between St. Louis and Pittsburgh, Pa., (11) between Indianapolis and St. Louis, (12) from Akron, Ohio to St. Louis, (13) from Indianapolis to Detroit, Mich., (14) from Indianapolis to Pittsburgh, (15) between Louisville and Pittsburgh, (16) between Louisville and Chicago, Ill., (17) between Indianapolis and Chicago, (18) between Cincinnati and Chicago, (19) from Chicago to Pittsburgh, (20) between Detroit and Louisville, (21) from Cleveland to Pittsburgh, (22) between Buffalo, N. Y., and St. Louis, and (23) between Buffalo and Indianapolis, over the routes described in appendix B hereto, serving East St. Louis, Ill., and Middletown and Hamilton, Ohio, as intermediate points; that by reason of such operation it is entitled to a certificate authorizing the continuance thereof; and that in all other respects the application should be denied."

7. Said Division No. 5 further found in said findings of fact that it could not, consistently with said applicant's common carrier status, restrict its services to particular shippers, namely, freight forwarders, and that to restrict the traffic which it might transport to shipments made by freight forwarders would, in effect and result, be a restriction of applicant's services to such forwarders.

8. Said Division 5 thereupon found and concluded that upon compliance by applicant with the requirements of Section 215 and 217 of said Act, and of the Rules and Regulations of said Commission thereunder, that an appropriate certificate in conformity with such findings would be issued to it, all as is more particularly set out in said Exhibit A aforesaid, in Appendix B thereof.

9. Thereafter, further proceedings were had in relation to said application, and the defendant, Interstate Commerce Commission, upon petitions filed by protestants for reconsideration of such findings and conclusions, vacated and set aside the order entered by Division 5, and upon such reconsideration the Commission entered its report and order showing the same to have been decided as of August 4, 1943, and a copy of the Commission's findings, conclusions and order of August 4, 1943, is attached hereto, marked Exhibit B, and made a part thereof.

10. The Commission in all respects confirmed the findings of fact of said Division No. 5 to the effect that said applicant, Globe Cartage Company, Inc., had been engaged in bona fide operations, without interruption, since prior to June 1, 1935, transporting by motor vehicle for compensation, in interstate or foreign commerce, general commodities, except commodities in bulk and those of unusual length, height or weight; it further found as a fact that said applicant was a common carrier by motor vehicle, and further confirmed and ratified the finding of Division 5 that the Commission could not, consistently with applicant's common carrier status, restrict its services to particular shippers; said Commission further found as a fact that said applicant, Globe Cartage Company, Inc., was a common carrier and entitled to authority to continue operations as such, and that said Commission was without power to restrict or limit its operations in a manner which would change its status from that of a common carrier.

11. That contrary to the findings above set forth, the Commission did place certain restrictions in said order of August 4, 1943, limiting the transportation to be performed in the future by the plaintiff to those general commodities which are at the time moving on bills of lading of freight forwarders, and specific reference is made to Sheet 5 of Exhibit B, from which the following is set forth:

"On reconsideration, we find that applicants are entitled to certificates authorizing operations by them as common carriers of general commodities (except commodities in bulk and those of unusual length, height or weight) which are at the time moving on bills of lading of freight forwarders, between the points and in the manner described in the findings in the prior reports."

The only reason advanced by the Commission for the inclusion of such restriction being, as plaintiff understands, that the previous operations of Globe Cartage Company Inc. had been confined exclusively to the receipt of such general commodities from Universal Carloading and Distributing Company, a freight forwarder, and that it must therefore be limited and confined to the receipt of such general commodities from freight forwarders, but which reason is believed by plaintiff to be wholly without right, and contrary to law, as is more fully shown later herein.

12. That further proceedings were had by said Commission in said matter, and a petition to modify the effective date of said order was filed, and on February 21, 1944, the Commission entered its order in said proceedings indicating that the order entered in said proceedings on August 4, 1943, as subsequently modified to become effective February 29, 1944, so far as it denied the application, be, and it is hereby, further modified so as to become effective on March 31, 1944, and then by order dated the 13th day of March 1944, but not made public until on or about March 23, 1944, and received by plaintiff through the United States Mails March 24, 1944, denied the said petition to modify the effective date of the said order beyond March 31, 1944, and said order is now a final order. A copy of the order of the Commission, as of the 21st day of February, 1944, is attached hereto, marked "Exhibit C," and made a part hereof, and there is also attached hereto the order of the Commission dated as of the 13th day of March 1944, marked "Exhibit D," and made a part hereof.

13. Plaintiff further avers that while said proceedings of Globe Cartage Company Inc. were pending before said Commission in said Cause No. MC3339, that it acquired all of the common carrier operating rights of the said Globe Cartage Company, Inc., and that such transaction was with the Commission's approval by formal report and order, dated as of May 16, 1942, in proceeding numbered MC-F 1743, and such operating rights were duly and legally acquired by, and transferred to this plaintiff, Hancock Truck Lines, Inc., and it is now the successor in interest of all the rights of said Globe Cartage Company, Inc., and ever since the consummation of the transaction shortly after the last named date, plaintiff has been, and is now, the sole owner of all of said rights of Globe Cartage Company, Inc., and of all rights, privileges and grants to which Globe Cartage Company, Inc., would have been entitled to, under and pursuant to the proceedings in its said application for said certificate in Cause No. MC-3339 aforesaid, and plaintiff is therefore now interested in said proceedings, and in said final order, and will be the sole owner of such certificate as is issued thereunder, and the said proceeding in No. MC-3339

is referred to by the Commission as now No. MC 25567 (Sub. No. 8) Hancock Truck Lines Inc., successor to Globe Cartage Company, Inc.

11 14. That the said Commission, by its own act, has included in the report and order of August 4, 1943, a reference to, and has decided the rights of another applicant, in this to wit: the Barnett Trucking Company applications No. MC 70614 and MC 23458; and plaintiff avers that said Barnett Trucking Company is an utter stranger to it and was not a party of record in the proceeding numbered as MC 3339 hereinbefore referred to, and upon recent investigation plaintiff has discovered that the effective date of the order, as it refers to the Barnett Trucking Company, has been modified so as to become effective June 30, 1944, instead of March 31, 1944; the effective date as to this plaintiff.

15. Plaintiff now further avers that that part of said final order of the defendant Commission which attempts to restrain, restrict and confine the operations authorized by it as a common carrier of general commodities, to such general commodities which are at the time moving on bills of lading of freight forwarders, is illegal and void and the Interstate Commerce Commission, in making and issuing said part of said order, exceeded the power and authority delegated to it by the Interstate Commerce Act, or by any other Act or law, and said Commission erred as a matter of law by inserting in said order the words following, viz., "which are at the time moving on bills of lading of freight forwarders," and it is this particular and specific part of said order of which the plaintiff complains in this action, and which it now alleges, is void as being in excess of the power and authority of the Commission, for the following reasons:

12 a. The Commission having found as a fact that the applicant, Globe Cartage Company, Inc., predecessor in interest of plaintiff, was a common carrier by motor vehicle and as such was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the routes and within the territory described in number 6 of this complaint, and for which an application for a certificate had been made as aforesaid, and had so continuously operated since that time, it was the statutory duty of the Commission to issue a certificate of public convenience and necessity to such applicant, or to this plaintiff as its successor in interest, without further proceedings, and without inserting either in the order therefor, or in such certificate, the words "which are at the time moving on bills of lading of freight forwarders," and the Commission had no power, right or authority to insert and include said words in said order, or to include the same in the certificate when issued.

b. The inclusion of said quoted words in said order, and in said certificate, is an unlawful and illegal restriction against and constraint upon plaintiff, not authorized by law, and is an unjust, unreasonable, and capricious limitation upon the rights, privileges and duties of the plaintiff as a common carrier of general commodities by motor vehicle for compensation, and will deprive plaintiff of its rights and property without due process of law in violation of the Constitution of the United States and the Fifth Amendment thereto.

c. The attempt by the Commission to limit the operations of the plaintiff by the terms of said order to commodities which are at the time moving on bills of lading of freight carriers, is an illegal and unreasonable limitation and restriction, 13 and is a violation of that part of Section 206 of said Act which mandates the Commission to issue such certificate, without further proceedings, where, as in this case, the Commission found as a fact that Globe Cartage Co., Inc., was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the routes designated, and had so operated since that time, and upon such findings of fact, the Commission had no power, authority, or discretion under said act to make any order, or embody within such certificate, a provision limiting the rights and duties of such common carrier to commodities at the time moving on bills of lading of freight forwarders. Such limitation is an ambiguous, indefinite, and inconsistent provision wholly unauthorized by law, and not sustained or supported by any fact found by the Commission, and is an arbitrary and unlawful discrimination against the plaintiff as a common carrier by motor vehicles, and is contrary to public policy.

16. Plaintiff further avers that as such common carrier of property by motor vehicles it has and does provide safe and adequate service, equipment, and facilities for the transportation of property consisting of general commodities in interstate and foreign commerce, and established, observed and enforced just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation 14 of property in interstate and foreign commerce, and has fully complied with all the rules and regulation of the Commission in relation thereto insofar as they are in effect at this time, and as such common carrier it is prohibited by law from making, giving or causing any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, district territory, or description of traffic, in any respect what-

soever, and, as a common carrier it is bound by law to receive and transport such general commodities as are offered to it for transportation by either the owners or their agents for transportation, and to carry them on the routes which it operates.

17. Plaintiff now further alleges that notwithstanding the matters and things hereinbefore alleged as to the invalidity and illegality of said part of said order, the defendants, and each of them, is threatening to enforce that part of said order thus complained of herein, and unless they are restrained and enjoined by this court they will enforce said void, illegal and invalid part of said order; that plaintiff has exhausted all of its remedies before the defendant, Interstate Commerce Commission, as provided by law and as provided by the rules and regulations of said Commission.

18. That the enforcement of the void part of said order aforesaid on March 31, 1944, by said defendants, will cause immediate and irreparable injury, loss and damage to result to this plaintiff before notice can be served, and a hearing had herein, as is more particularly shown by the following specific facts:

15 The original application of Globe Cartage Co., Inc., in Cause No. MC-3339 was filed before the Commission on or about January 29, 1936, and as of June 1, 1935, it operated 172 units, consisting of 85 tractors, 84 semitrailers, and three straight trucks; at the time of the hearing before Division 5, its business had increased and it was then operating approximately 202 units, consisting of 102 tractors, 92 semitrailers and 8 "spotting" tractors; it had built up a large volume of business over the routes described in number 6 herein, consisting of the transportation of general commodities tendered to it by the Universal Carloading and Distributing Company, as a freight forwarder, and which business was in existence at the time plaintiff purchased and thus acquired the interest of Globe Cartage Co., Inc., as set out in number 13 hereof, and all of said business was purchased by plaintiff as aforesaid, and it passed to, and became the property of this plaintiff.

At that time, plaintiff had certain certificates of public convenience and necessity which authorized the transportation of general commodities between Chicago, Illinois, and Evansville, Indiana, serving all intermediate points along U. S. Highway 41, including that of Vincennes, Indiana; and from St. Louis, Mo., to Louisville, Kentucky, serving certain intermediate points, of which there was included that of Vincennes, Indiana; and from Indianapolis, Indiana, to Terre Haute, Indiana, serving all intermediate points along U. S. Highway 40, meeting with the Chicago-

Evansville route at Terre Haute, Indiana; and a route from Indianapolis, Indiana, to Vincennes, Indiana, via Indiana Highway 67, which is the direct route; and route between Indianapolis, Indiana, and Evansville, Indiana, over a direct route; and also from Evansville, Indiana, to St. Louis, Mo., over a direct route, and your plaintiff in keeping with these certificates has operated continuously over those routes, as well as the routes as are involved in the Order which is here the subject of complaint.

16 Your plaintiff for many years last past, and even prior to the acquiring of the rights from the Globe Cartage Company, Inc., did through its efforts establish a substantial business between Indianapolis and St. Louis, Mo., including intermediate points particularly that of Terre Haute, Indiana, and also between Louisville and Indianapolis, and Louisville and Chicago. The effect of the Order of the Commission which is to become effective March 31, 1944, would destroy in one sweep a large part of the business that your plaintiff through years of effort was able to establish, and for specific examples, it is here indicated that the approximate annual business as handled by your plaintiff between Indianapolis, Indiana, and St. Louis, Mo., is 13,200,000 lbs., out of which amount approximately sixty (60%) percent represents tonnage tendered to your plaintiff by others than freight forwarders; and between Louisville, Kentucky, and Chicago, Illinois, giving consideration to the intermediate point of Indianapolis, Indiana, the approximate yearly tonnage was 34,660,000 lbs., of which quantity approximately fifty (50%) percent was that tendered to plaintiff by others than freight forwarders. From Cincinnati, Ohio, to Chicago, Illinois, your plaintiff has handled in the past approximately 5,760,000 lbs. of property per year that was not moving on freight forwarder bill of lading; and if said part of said Order here complained of is enforced on March 31, 1944, plaintiff will thereupon at once be deprived of valuable operating rights which it believed it was acquiring in said purchase from Globe Cartage Company, Inc. as aforesaid, and it will suffer a further loss and damage of approximately \$75,000.00 per year on account of loss of revenue on said routes and will destroy its right to receive such general commodities direct from the true owners thereof rather than through the agency of freight forwarders.

17 The Order of the Commission, if allowed to become effective, will be tantamount to dividing the shipping public into classes, considering on the one hand as a part of the general public the freight forwarders, and, on the other hand, the remainder of the shipping public, and, further would present the peculiar sit-

uation of the tonnage moving on freight forwarder bills of lading moving over one route, and that from the remainder of the shipping public over an entirely different route, and particularly would this be true on movements between Indianapolis, Indiana and St. Louis, Mo. and between Louisville, Kentucky and Chicago, Illinois, giving consideration to the intermediate point of Indianapolis, Indiana.

A further unwarranted hardship, as applying to these particular movements, would be one of working against the intermingling of freight as tendered to your plaintiff by all classes of the shipping and receiving public and would not only hamper the free flow of commerce but would delay the transportation of vital war materials which are being today transported by your plaintiff, and, further, would bring about increased costs of operation affecting the entire operation as a whole. The business as aforesaid mentioned is entirely placed in jeopardy for the authorized routes as covered by certificates of public convenience and necessity between Indianapolis, Indiana and St. Louis, Mo., and between Louisville, Kentucky and Chicago, Illinois, giving consideration to Indianapolis, Indiana, are in variance with the degree of circuitry as permitted by the rules of the Office of Defense transportation.

18 Wherefore, plaintiff prays:

1. That process issue against the defendant, United States, and the defendant, Interstate Commerce Commission, as provided by law.

2. That the Court, as soon as practicable after the filing of this complaint, shall call to its assistance in hearing and determination thereof, two other Judges, one of whom shall be a Circuit Judge.

3. That a temporary restraining order be granted and issued herein, without notice, to be effective until the further order of the Court, and until such time as notice can be given, and proper hearing can be had thereon, of an application to be made for a preliminary injunction, such restraining order to in all respects restrain the defendants herein, and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them who receive actual notice thereof, from enforcing, or in any manner attempting to enforce, that part of said order in Cause No. MC-3339 aforesaid, as limits and restricts the operations of this plaintiff as a common carrier of general commodities to those commodities which are at the time moving on bills of lading of freight forwarders.

4. That after such notice as the Court may require, and upon such hearing as may be necessary, a preliminary or temporary

injunction be granted and issued, to be effective until the final adjudication herein, enjoining and prohibiting the defendants herein, and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice thereof, from enforcing, or in any manner attempting to enforce, that part of said order in Cause No. MC-3339 aforesaid, as limits and restricts the operations of this plaintiff as a common carrier of general commodities to those commodities which are at the time moving on bills of lading of freight forwarders.

19 5. That upon the final hearing herein, it be adjudged and decreed that that part of the order of the defendant Commission in said cause No. MC-3339 complained of herein, and which attempts to limit and restrict the operations of this plaintiff as a common carrier of general commodities to such general commodities which are at the time moving on bills of lading of freight forwarders, be declared null, void and of no force or effect, and that the defendants, and each and all of their officers, agents, servants, employees, and attorneys, and all persons whomsoever shall be permanently enjoined and prohibited from enforcing said part of said order.

6. That this Honorable Court grant the plaintiff such other and further relief as may be just and proper in the premises.

HANCOCK TRUCK LINES, INC.,
By ROY A. FRIEDLE,
Roy A. Friedle, *President.*

[*Duly sworn to by Roy A. Friedle; jurat omitted in printing.*]

20

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Attorneys for Plaintiff.

INTERSTATE COMMERCE COMMISSION

No. MC-3339¹

GLOBE CARTAGE COMPANY, INC., COMMON CARRIER APPLICATION

Submitted April 3, 1941. Decided October 7, 1942

1. Applicant found entitled to continue operations as a common carrier by motor vehicle, of general commodities, between certain points in Illinois, Indiana, Kentucky, Michigan, Missouri, New York, Ohio, and Pennsylvania, over regular routes, by reason of having been so engaged on June 1, 1935, and continuously since. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application No. MC-3339 in all other respects denied.

2. Applicant found to have failed to establish the right to a permit as a contract carrier by motor vehicle under the "grandfather" clause of section 209 (a) of the act. Application No. MC-3340 denied.

Ferdinand Born and Jacob Weiss for applicant.

Jerome D. Fenton, Paul Hergenreder, Vernon L. Stouffer, Harry E. Yockey, Joseph H. Welker, Paul M. Burke, Howell Ellis, B. W. La Tourette, Oscar Lindstrand, Jacob B. Josselson, Jack Goodman, O. G. Tiedeman, and Thomas B. Harvey for protestants.

REPORT OF THE COMMISSION

DIVISION 5. COMMISSIONERS LEE, ROGERS, AND PATTERSON

BY DIVISION 5:

Exceptions were filed by applicant and by protestants to the recommended order of the examiner, and each replied to the exceptions of the other. Our conclusions differ somewhat from those recommended.

By application No. MC-3339, under the "grandfather" clause of section 206 (a) of the Interstate Commerce Act, filed February 4, 1936, as amended, Globe Cartage Company, Inc., of Indianapolis, Ind., seeks a certificate authorizing continuance of operations as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, except commodities in bulk and those of unusual length, height, or weight, between

¹ This report also embraces No. MC-3340, Globe Cartage Company, Inc., Contract Carrier Application.

certain points in Illinois, Indiana, Kentucky, Michigan, Missouri, New York, Ohio, Pennsylvania, and West Virginia, over the regular routes described in appendix A hereto, serving all intermediate points. Appendix A is a copy of an exhibit which was submitted in evidence at the hearing, and is reproduced here as a basis for discussion. The "exhibit numbers" appearing thereon before each route description correspond to the exhibit numbers under which documentary evidence of operation between designated points is listed.

By another application, No. MC-3340, under the "grandfather" clause of section 209 (a) of the Interstate Commerce Act, filed February 4, 1936, as amended, the same applicant seeks a permit authorizing continuance of operations as a contract carrier by motor vehicle, in interstate or foreign commerce, of the same commodities, between the same points, and over the same regular routes as claimed in No. MC-3339. There was no evidence offered in support of No. MC-3339, but a motion to consolidate the records in the two proceedings was granted by the examiner. A number of rail and motor carriers oppose both applications.

Applicant was incorporated under the laws of Indiana, in 1931. It has been engaged in the transportation of freight for the Universal Carloading & Distributing Company, hereinafter called Universal, under written contracts since prior to June 1, 1935. In addition to serving Universal it also claims to have been operating for other shippers, under contract, transporting such commodities as magazines (packed in mail bags), leather, printed matter, paper, bottles, and alcoholic beverages. The names of the persons for whom such operations are claimed to have been performed were not disclosed, and no showing was made as to the extent of such service, the time when it was begun, the points served, the frequency of the service, or the arrangements under which the operations were conducted. In addition, we observe that, out of several thousand trips shown of record both prior and subsequent to June 1, 1935, not one relates to service other than that performed for Universal. The burden of proof in support of a claim of an operating right under the "grandfather" clauses of sections 206 (a) and 209 (a) of the act rests upon applicant both as to the character and scope of its operations, both on and since the respective statutory dates. On the present record, we must conclude that applicant has failed to establish that it has served any shippers other than Universal.

As above stated, applicant claims to have transported magazines in mail bags, but the record does not indicate whether it has been engaged in the transportation of mail when so-employed. If so, attention is invited to the fact that authority from the Commission

is not necessary for the transportation of mail under contract with the Post Office Department or as a subcontractor with the approval of that Department, in vehicles used exclusively for that purpose, or in the same vehicle with property moving in interstate or foreign commerce. Freer Bros. Motor Exp. Lines Common Carrier Application, 7 M. C. C. 203.

The business of Universal, a forwarder or carloading company, is the receipt of individual shipments of miscellaneous articles from the general public and the consolidation thereof into carload or truckload quantities, for transportation by rail, water, or motor, between numerous points throughout the United States. Applicant has no dealings with the individual shippers, but transports consolidated lots of freight under a written contract with Universal. The vehicles are loaded and sealed at Universal's loading platforms by its employees and also unloaded at destination by that company's employees. When a vehicle contains freight destined to two or more terminals of Universal, it is partially unloaded and again sealed and dispatched to the next terminal for further partial unloading or complete unloading as the case may be. Applicant's service has been confined to transporting between the larger cities where Universal has dock or terminal space. At such points, local carriers perform collection and delivery services. Universal solicits from the public all the freight transported by applicant and issues bills of lading designating itself as both the consignor and consignee, and in the space provided for naming the route or carrier, applicant's name is inserted.

Tariffs, schedules of minimum rates, and copies of contracts with Universal have been filed by applicant with this Commission. Shipments for Universal are not confined to any particular weight, but applicant accepts any quantity, and transportation charges are collected on the basis provided in its schedule of minimum rates and charges.

Applicant contends that its service for Universal is that of a contract carrier by motor vehicle. In Acme Fast Freight, Inc., Common Carrier Application, 8 M. C. C. 211, the Commission pointed out that forwarding companies are engaged in common carriage for the general public, and expressed the view that shipments for which they assume responsibility cannot lose their identity as shipments in common carriage at any stage of the transportation service which the forwarding company undertakes to provide, and that they are not, therefore, shipments which can be transported lawfully by a motor contract carrier. Applicant's services for Universal are those of a common carrier. American Motor Dispatch, Inc., Com. Car. Application, 26 M. C. C. 346,

and Hoey Cartage Co. Contract Carrier Application, 28 M. C. C. 102. Since applicant's entire operations so far as shown by this record have been for Universal and have been and are those of a common carrier, the application for a permit will be denied.

Applicant was registered under the code of fair competition for the trucking industry during the years 1934 and 1935. As of June 1, 1935, it operated 172 units, consisting of 85 tractors, 84 semitrailers, and 3 straight trucks, of which 12 tractors, 18 semitrailers, and 2 trucks were owned by it. At the time of the hearing, approximately 202 units, consisting of 102 tractors, 92 semitrailers, and 8 "spotting" tractors, were used by applicant, of which 23 tractors and 45 semitrailers were owned by it. Equipment not owned by applicant has been operated under arrangements with owner-operators.

There is no showing that applicant has operated its owned equipment indiscriminately over all of the routes claimed sufficiently to establish "grandfather" rights thereover, and we must therefore determine whether the operations performed by the use of owner-operators have been, and are, those of applicant. There are no contracts or other documentary evidence of record bearing on this matter, and the evidence as to the exact terms or the arrangements between applicant and the owner-operators is not as complete as it might be. It does appear, however, that it has been customary for applicant to have written leases with its owner-operators since prior to June 1, 1935. The term of these leases was 1 year. The owner-operators worked exclusively for applicant and paid the cost of operation of their vehicles. They had no contact with Universal, and all billing was in applicant's name. Applicant collected the charges for all services rendered. It provided cargo, and public-liability, and property-damage insurance on the vehicles of the owner-operators and assumed responsibility for loss and damages resulting from the latter's operations. Applicant had the right to hire and discharge the drivers used on owner-operator equipment, and its dispatchers and other employees directed the time and manner of loading of the owner-operator equipment and its movements over the routes in question. Many of the owner-operators utilized have worked for applicant for a number of years. Applicant holds authority to operate as a motor carrier of property in the several States through which operations are conducted. It is responsible only to Universal and holds itself out to Universal as the carrier.

In *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M. C. C. 735, division 5 held that operations by owner-operators, when definitely under an applicant's direction, control, and responsibility, become the operations of such applicant, which is

the dominant carrier. Based on the facts above stated, we conclude that the vehicles of the owner-operators, while being used by applicant, were operated under its direction and control and under its responsibility, and that the operations so conducted were those of applicant.

Applicant claims to have operated over all the routes described in appendix A, serving all intermediate points. Numerous abstracts of shipping documents purporting to show operation since the statutory date were offered in evidence, but they fail to show continuous operation between all points claimed. The general traffic manager of applicant, who has been with the company since 1932, testified that applicant's operations have been conducted between the points and over all the routes described in appendix A continuously since prior to June 1, 1935. His testimony, however, was indefinite, and cannot be identified with any particular point or route. It does not disclose the date operations were instituted over any particular route, or other data necessary to establish with particularity the fact of continuous operation on and since the statutory date. Standing alone, it is insufficient in our opinion to prove all the operations of the scope here claimed in the absence of supporting documentary evidence.

In January 1937, the White River at Indianapolis reached flood stage and caused water from the sewers to back up into applicant's office and record room, causing considerable damage to its records. In cleaning up after the flood, two truckloads of records were hauled away because of the infiltration of filth, water, grease, and oil. Furthermore, the records that were made available to one of our field staff in applicant's office, in October 1936, could not be located for presentation at the hearing. The operations which the damaged records would have covered if they had been available has not been established. Applicant also failed to present documentary evidence showing operations subsequent to January 1937, the flood period, between certain points hereinafter discussed in detail.

The points served and routes traversed will be discussed in the order in which the evidence was submitted, as shown in Appendix A. The examiner recommended that applicant be authorized to operate over 37 regular routes including several alternate routes. Those hereinafter granted are described and numbered in appendix B hereto.

Now uncontested routes.—In exceptions filed by protestants to the order recommended by the examiner, no mention is made of the first 11 routes proposed to be granted by the examiner, which routes coincide with the first 11 exhibit listings described in appendix A. These routes, which reflect operations (1) between Chi-

cago, Ill., and St. Louis, Mo., (2) between St. Louis and Cincinnati, Ohio, (3) between Louisville, Ky., and Cincinnati, (4) between Indianapolis, Ind., and Cincinnati, (5) between Indianapolis and Cleveland, Ohio, (6) between St. Louis and Dayton, Ohio, (7) between Louisville and Indianapolis, (8) between St. Louis and Louisville, (9) between St. Louis and Cleveland, (10) between St. Louis and Pittsburgh, Pa., and (11) between Indianapolis and St. Louis, need not be discussed in detail. Authority will be granted to continue such operations over any combination of the routes described in appendix B hereto.

Intermediate points.—The application includes a request to serve all intermediate points on the described routes, but the only evidence of service at such points relates to East St. Louis, Middletown, and Hamilton, Ohio. There is no documentary evidence to show operation at East St. Louis, but the general traffic manager of Universal was positive in his assertion that an increase in business at the St. Louis office caused his firm to open an office in East St. Louis in September 1934, from which date service at East St. Louis was given by applicant. The lack of documentary proof of service is explained by the fact that shipments from or to such point were billed as to or from St. Louis. The actual operating practice, however, was to stop in-bound trucks for partial unloading at East St. Louis. Out-bound trucks from St. Louis were partially loaded at East St. Louis in a similar manner, which practice has been continued to date. That service has been rendered Universal to and from the intermediate points of Middletown and Hamilton, Ohio, continuously since June 8, 1934, is satisfactorily shown by parol evidence of the terminal manager at Cincinnati, who has held that position since the latter date. Except as to these points, the authority herein granted will not include any intermediate point off any of the described routes. Routes between remaining points will be separately discussed.

Akron-St. Louis.—The documentary evidence submitted discloses one shipment on May 28, 1935, from St. Louis to Akron, none from that date to May 18, 1936, and from the later date to December 31, 1938, there were numerous shipments. No shipments are shown from December 31, 1938, to the date of the hearing in November 1939. It is apparent that, if a service from St. Louis to Akron can be said to have existed on the statutory date, it was abandoned on December 31, 1938. With respect to service in the opposite direction, the documentary evidence shows that applicant has operated from Akron to St. Louis continuously since a date prior to June 1, 1935, and is entitled to continue that service.

Akron-Cleveland.—On the claimed operation from Akron to Cleveland, there was shown only one shipment, which moved

January 24, 1937. In the reverse direction, numerous shipments were made from March 8, 1934, to April 4, 1935, but the record does not show that there were any shipments after the latter date except for two in 1939, one on January 12 and the other on June 12. The evidence is not sufficient to justify the granting of authority sought between Akron and Cleveland.

Akron-Chicago.—There were shown four shipments only, from Chicago to Akron; three of those in November 1936 and the other September 3, 1938. The first shipment shown from Akron to Chicago was on April 8, 1936, with six others during 1936, five during 1937, numerous others during 1938, and eight during the first half of 1939. The evidence of operation between Chicago and Akron showing no service at all prior to June 1, 1935, is not sufficient to prove "grandfather" rights between those points over the routes claimed.

Akron-Buffalo.—As to the claimed operation from Akron to Buffalo, N. Y., there were shown three shipments in 1938; two shipments in 1939; and, in the reverse direction, two only, in 1938, one on February 24 and the other on March 3. This showing is not sufficient to prove a "grandfather" operation between these points.

St. Louis-Springfield.—There is no documentary evidence indicating any operation from St. Louis to Springfield, Ohio. The operation in the reverse direction from Springfield to St. Louis was instituted prior to June 1, 1935, and continued rather consistently until July 31, 1936. From the latter date to September 27, 1937, no service is shown. After September 27, there were 9 shipments in 1937; 20 in 1938; and 3 in 1939, 1 on January 3, 1 on February 25, and the other on March 1. Most of the period in 1937 as to which there is no documentary evidence was after the flood that destroyed a portion of applicant's records. No explanation was made of the failure to show any shipments moved after March 1, 1939. Applicant has failed to establish an operation between St. Louis and Springfield over the routes claimed.

Dayton-Indianapolis.—No documentary evidence was submitted to show an operation from Dayton to Indianapolis. In the opposite direction, there were shown two shipments in 1935, none in 1936, a substantial number in 1937, two in December 1938, and one on February 6, 1939. This showing suggests a virtual cessation of operation over this route and is not sufficient to establish the routes claimed between Indianapolis and Dayton.

Indianapolis-Toledo.—The service between Indianapolis and Toledo, was instituted prior to June 1, 1935, but no service from Toledo to Indianapolis is shown after September 27, 1937, and none in the opposite direction after October 1, 1937. Applicant has failed to establish the rights sought between these points.

St. Louis-Toledo.—The operation between St. Louis and Toledo was begun prior to the statutory date, but no service is shown from St. Louis to Toledo from September 11, 1935, to August 14, 1937, none in 1938, and only one shipment in 1939. No service was rendered from Toledo to St. Louis during 1937. There were two shipments in 1938, and two in 1939. No operating rights have been established between these points over the routes claimed.

Indianapolis-Detroit.—The record shows three shipments in May 1934, one in August, one in September, and one on November 15, 1934, but there is no documentary evidence of operation from Detroit to Indianapolis from November 15, 1934, to May 16, 1936. Quite a volume of shipments continuously since the latter date are shown. It thus appears that there was no operation on the statutory date. Even if consideration be given to the operation prior to November 1934, the cessation in such service for approximately 19 months must be considered an abandonment thereof.

With respect to service in the opposite direction, there were nine shipments during 1935, some of them prior to June 1, and considerably more during each of the subsequent years. The evidence submitted is deemed sufficient proof that applicant has operated from Indianapolis to Detroit since prior to June 1, 1935.

Indianapolis-Pittsburgh.—Operation from Pittsburgh, Pa., to Indianapolis was instituted on May 3, 1935, and there was a regular movement until June 17, 1938, at which time the service in that direction appears to have been abandoned, as there is no evidence of operation since that time. However, the evidence presents a different picture with respect to service from Indianapolis to Pittsburgh. It was begun in May 1935 and has been continuous since.

Louisville-Cleveland.—The record shows numerous shipments from Louisville to Cleveland from May 1, 1935, to December 31, 1936, two in January, one in February, one on April 8, 1937, and none from the latter date to February 10, 1939, a cessation of operation for 22 months. Numerous shipments were made from Cleveland to Louisville from May 1, 1935, to November 20, 1937, but the record does not show any shipments after the latter date except one on August 14, 1939. No rights between these points can properly be granted on the present record.

Louisville-Pittsburgh.—The documentary evidence submitted, which need not be reviewed, shows that applicant is entitled to continue the operations between Louisville and Pittsburgh.

Pittsburgh-Cincinnati.—The operation between Pittsburgh and Cincinnati was instituted on July 14, 1936, in one direction, and in the opposite direction on July 15, 1936, or more than 13 months

after the statutory date. The evidence will not support a finding that applicant is entitled to authority to operate between Pittsburgh and Cincinnati.

Louisville-Chicago, Indianapolis-Chicago, Cincinnati-Chicago.—No exceptions were filed to that portion of the examiner's recommended order which proposed a grant of operating authority between these points. They need not be discussed in detail. Authority will be granted between these points.

Chicago-Pittsburgh.—According to the documentary evidence submitted in support of the operation from Pittsburgh to Chicago, the service commenced prior to June 1, 1935, was abandoned from April 18, 1936, to September 2, 1937, both inclusive. Service in the opposite direction has been continuous since prior to the statutory date. Applicant is entitled to continue operation from Chicago to Pittsburgh.

Detroit-Louisville.—There is also ample proof which need not be described in detail that applicant is entitled to continue operating between Detroit and Louisville.

Dayton-Springfield.—The evidence shows conclusively that on April 29, 1938, applicant abandoned an operation begun prior to June 1, 1935, from Dayton to Springfield. Service in the reverse direction was discontinued on April 1, 1938. Applicant has failed to establish a right to operate between these points.

Columbus-Pittsburgh.—There is no documentary evidence of operation from Columbus to Pittsburgh. In the reverse direction, there were seven shipments in 1935, three shipments in 1936, three shipments in 1937, none in 1938, and only one in 1939. Having in mind the importance of these points, the meager service shown is not sufficient to warrant a finding of a bona fide operation on and continuously since June 1, 1935.

Cleveland-Pittsburgh.—No documentary proof was offered with respect to service from Pittsburgh to Cleveland. There is satisfactory proof, however, with respect to the operation from Cleveland to Pittsburgh.

Columbus-St. Louis.—Evidence of operation from Columbus to St. Louis shows 1 shipment on March 2, 1935, none in 1936, 9 in 1937, and 17 in 1938, but no evidence was submitted to show an operation after December 16, 1938. The record does not show any evidence of operation from St. Louis to Columbus. On the present record, no authority can properly be granted between these points.

Cleveland-Cincinnati.—The evidence shows 2 shipments in 1934 from Cleveland to Cincinnati, 3 in October and November 1935, 10 in 1936, 2 in 1937, 5 in 1938, and 1 on January 28, 1939. No

evidence was submitted to show an operation in the reverse direction. Applicant therefore has not submitted sufficient proof to show continuous operation between these points over the routes claimed.

Buffalo-Pittsburgh.—Applicant did not submit any documentary evidence in support of a claimed route between Buffalo and Pittsburgh, and it does not appear to be entitled to authority to operate between these points over the route described in appendix A.

Buffalo-St. Louis.—The first operation between Buffalo and St. Louis shown by any documentary evidence was on June 27, 1936, and there has been a continuous operation since that time. However, the general traffic manager of Universal, who has been with the company since December 1, 1918, was positive that service has been rendered by applicant between Buffalo and St. Louis since September 1934, at which time Universal opened its office in East St. Louis. Daily service is provided between these points. The operation will be authorized between these points.

Buffalo-Chicago.—No documentary evidence was submitted in support of a claimed operation over specified routes between Buffalo and Chicago. Consequently, no authority can be granted between these points.

Buffalo-Indianapolis.—Both parol and documentary evidence show that the operation between Buffalo and Indianapolis also was commenced in September 1934. No interruption appears, and the operation will be authorized.

Louisville-Buffalo.—There was no documentary evidence nor definite and specific oral testimony to support the claimed operation between Louisville and Buffalo. No authority can be granted to operate between these points.

On and continuously since June 1, 1935, applicant has transported shipments for Universal, consisting of general freight, over the routes and in the manner described in appendix B. With this fact in mind, protestants contend that any authority granted herein should be limited to common-carrier service for Universal for the reason that the evidence presented as proof of operation was confined to traffic handled by that company. Careful consideration convinces us that this contention should not be sustained. Section 203. (a) (44) of the act provides that the term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle of passengers or property for compensation. We cannot, consistently with applicant's common-carrier status, restrict its service to particular shippers, namely, freight forwarders. And to restrict the traffic which it may transport to

shipments made by freight forwarders would, in effect and result, be a restriction of applicant's service to such forwarders.

We find that on June 1, 1935, applicant was, and continuously since has been, in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, (1) between Chicago, Ill., and St. Louis, Mo., (2) between St. Louis and Cincinnati, Ohio, (3) between Louisville, Ky., and Cincinnati, (4) between Indianapolis, Ind., and Cincinnati, (5) between Indianapolis and Cleveland, Ohio, (6) between St. Louis and Dayton, Ohio, (7) between Louisville and Indianapolis, (8) between St. Louis and Louisville, (9) between St. Louis and Cleveland, (10) between St. Louis and Pittsburgh, Pa., (11) between Indianapolis and St. Louis, (12) from Akron, Ohio, to St. Louis, (13) from Indianapolis to Detroit, Mich., (14) from Indianapolis to Pittsburgh, (15) between Louisville and Pittsburgh, (16) between Louisville and Chicago, Ill., (17) between Indianapolis and Chicago, (18) between Cincinnati and Chicago, (19) from Chicago to Pittsburgh, (20) between Detroit and Louisville, (21) from Cleveland to Pittsburgh, (22) between Buffalo, N. Y., and St. Louis, and (23) between Buffalo and Indianapolis, over the routes described in appendix B hereto, serving East St. Louis, Ill., and Middletown and Hamilton, Ohio, as intermediate points, that, by reason of such operation, it is entitled to a certificate authorizing the continuance thereof; and that in all other respects the application should be denied.

We find, in No. MC-3340, that applicant has failed to establish the right to a permit under the "grandfather" clause of section 209 (a) of the act and that the application should be denied.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act and our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying No. MC-3339, except to the extent granted herein, and denying No. MC-3340 in its entirety.

ROGERS, Commissioner, concurring:

I approve the report. However, I believe that there is merit in the contention, discussed in the report, that any authority granted to applicant should be restricted to the type of traffic which applicant has exclusively transported since prior to the statutory date. This could be accomplished by a restriction of the authority to " * * * traffic which is, at the time of transportation by applicant, in the primary custody of and moving on bills of lading of freight forwarders, as defined in section 402 (a) (5) of part IV of the Interstate Commerce Act." Freight forwarders do not occupy the mere status of a shipper.

PATTERSON, Commissioner, dissenting:

Section 203(14) of the act defines a common carrier by motor vehicle as any person which "holds itself out to the general public" to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation.

The holding out may be limited as to the articles transported and the points between which transportation will be performed. It may not be limited to particular shippers or classes of shippers but must be to the general public.

This applicant since prior to June 1, 1935, has served only the Universal Carloading & Distributing Company under written contracts and has never held itself out to serve the general public. In my opinion, it is and has been exclusively a contract carrier.

APPENDIX A

Routes claimed

EXHIBIT 1

Between Chicago, Ill., and St. Louis, Mo.

Regular route:

From St. Louis, Mo., to intersection of Ill. S. R. 48 via U. S. 66

From intersection of Ill. S. R. 48 and U. S. 66 to Onarga, Ill., via Ill. S. R. 48

From Onarga, Ill., to intersection of U. S. 66 via U. S. 45

From intersection of U. S. 66 and U. S. 45 to Chicago, Ill., via U. S. 66

Alternate route:

A. From St. Louis, Mo., to Springfield, Ill., via U. S. 66

From Springfield, Ill., to Peoria, Ill., via Ill. S. R. 24

From Peoria, Ill., to Chenoa, Ill., via U. S. 24

From Chenoa, Ill., to Chicago, Ill., via U. S. 66

B. From St. Louis, Mo., to Chicago, Ill., via U. S. 66

EXHIBIT 2

Between St. Louis, Mo., and Cincinnati, Ohio

Regular route:

From St. Louis, Mo., to Cleves, Ohio, via U. S. 50

From Cleves, Ohio, to Cincinnati, Ohio, via Ohio S. R. 264

Alternate route:

From St. Louis, Mo., to Indianapolis, Ind., via U. S. 40

From Indianapolis, Ind., to Cincinnati, Ohio, via U. S. 52

EXHIBIT 3

Between Louisville, Ky., and Cincinnati, Ohio

Regular route:

From Louisville, Ky., to Seymour, Ind., via U. S. 31, 31E and 31W

From Seymour, Ind., to Cleves, Ohio, via U. S. 50

From Cleves to Cincinnati, Ohio, via Ohio S. R. 264

Alternate route:

From Louisville, Ky., to Covington, Ky., to Cincinnati, Ohio, via U. S. 42

EXHIBIT 4

Between Indianapolis, Ind., and Cincinnati, Ohio

Regular route:

From Indianapolis, Ind., to Cincinnati, Ohio, via U. S. 52

Alternate route:

From Indianapolis, Ind., to intersection of U. S. 35 via U. S. 40

From intersection of U. S. 40 and U. S. 35 to Eaton, Ohio, via U. S. 35

From Eaton, Ohio, to intersection of Ohio S. R. 122 and Ohio S. R. 4 via Ohio S. R. 122

From intersection of S. R. 4 and S. R. 122 to Cincinnati, Ohio, via S. R. 4

EXHIBIT 5

Between Indianapolis, Ind., and Cleveland, Ohio

Regular route:

From Indianapolis, Ind., to the intersection with Ohio S. R. 32 via 67

From Intersection of Ohio S. R. 32 and 67 to Wapakoneta, Ohio, via U. S. 32 (33)

From Wapakoneta, Ohio, to Findlay, Ohio, via U. S. 25

From Findlay, Ohio, to Lodi, Ohio, via U. S. 224

From Lodi, Ohio, to Cleveland, Ohio, via U. S. 42

Alternate route:

A. From Indianapolis, Ind., to Lafayette, Ohio, via U. S. 40

From Lafayette, Ohio, to Cleveland, Ohio, via U. S. 42

B. From Indianapolis, Ind., to the intersection U. S. 127 via U. S. 40

From intersection of U. S. 127 and U. S. 40 to Celina, Ohio, via U. S. 127

From Celina, Ohio, to Wapakoneta, Ohio, via Ohio S. R. 32 (33)

From Wapakoneta, Ohio, to Findlay, Ohio, via U. S. 25

From Findlay, Ohio, to junction with Ohio S. R. 3 via U. S. 224

From junction Ohio S. R. 3 and U. S. 224 to Cleveland, Ohio, via S. R. 3

EXHIBIT 6

Between St. Louis, Mo., and Dayton, Ohio

Regular route:

From Indianapolis, Ind., to the intersection of U. S. 35 and U. S. 40 via U. S. 40.

From the intersection of U. S. 35 and U. S. 40 to Dayton, Ohio, via U. S. 35

Alternate route:

From St. Louis, Mo., to Miami, Ohio, via U. S. 50

From Miami, Ohio, to Hamilton, Ohio, via Ohio S. R. 128

From Hamilton, Ohio, to Dayton, Ohio, via Ohio S. R. 4

EXHIBIT 7

Between Louisville, Ky., and Indianapolis, Ind.

Regular route:

From Louisville, Ky., to Indianapolis, Ind., via U. S. 31, 31E and 31W

Alternate route:

From Louisville, Ky., to the intersection of Indiana S. R. 9 and U. S. 31, 31E and 31W

From intersection of Indiana S. R. 9 and U. S. 31 to the intersection of Indiana S. R. 7 and 9 via S. R. 9

From intersection of Indiana S. R. 7 and S. R. 9 to Columbus, Ind., via Indiana S. R. 7

From Columbus, Ind., to Indianapolis, Ind., via U. S. 31

EXHIBIT 8

Between St. Louis, Mo., and Louisville, Ky.

Also deadhead to Alton, Ill., from St. Louis, Mo., and from Alton, Ill., to St. Louis, Mo.

Regular route:

From St. Louis, Mo., to Shoals, Ind., via U. S. 50

From Shoals, Ind., to Louisville, Ky., via U. S. 150

Alternate route:

Between St. Louis, Mo., and Alton, Ill., via Illinois U. S. 67

From Alton, Ill., to intersection of Illinois 140 and U. S. 40 to intersection of Illinois S. R. 127 via Illinois S. R. 140 and U. S. 40

From intersection of Illinois S. R. 127 and U. S. 40 to junction with Illinois S. R. 127 and U. S. 50 via U. S. 127

From intersection of U. S. 50 and Illinois S. R. 127 to Shoals, Ind., via U. S. 50

From Shoals, Ind., to Louisville, Ky., via U. S. 150

EXHIBIT 9

Between St. Louis, Mo., and Cleveland, Ohio

Regular route:

From St. Louis, Mo., to Springfield, Ill., via U. S. 66

From Springfield, Ill., to Indianapolis, Ind., via U. S. 36

From Indianapolis, Ind., to junction with Ohio S. R. 32 (33) via Ind. S. R. 67

From intersection of Ohio S. R. 32 (33) and Ind. S. R. 67 to Wapakoneta via Ohio S. R. 32 (33)

From Wapakoneta to Findlay, Ohio, via U. S. 25

From Findlay, Ohio, to Lodi, Ohio, via U. S. 224

From Lodi, Ohio, to Cleveland, Ohio, via U. S. 42 with alternate from Lodi, Ohio, to intersection with Ohio S. R. 3 via U. S. 224

From intersection of Ohio S. R. 3 and U. S. 224 to Cleveland, Ohio, via Ohio S. R. 3

Alternate route:

From St. Louis, Mo., to intersection with Ill. S. R. 16 via U. S. 66

From intersection of Ill. S. R. 16 and U. S. 66 to Mattoon, Ill., via S. R. 16

From Mattoon, Ill., to Tuscola, Ill., via U. S. 45

From Tuscola, Ill., to Indianapolis, Ind., via U. S. 36

From Indianapolis, Ind., to intersection with Ohio S. R. 3 via U. S. 40

From intersection of Ohio S. R. 3 and U. S. 40 to Cleveland, Ohio, via S. R. 3

EXHIBIT 10

Between St. Louis, Mo., and Pittsburgh, Pa.

Regular route:

From St. Louis, Mo., to Cambridge, Ohio, via U. S. 40

From Cambridge, Ohio, to Pittsburgh, Pa., via U. S. 22

Alternate route:

A. From St. Louis, Mo., to intersection with Ohio S. R. 79 via U. S. 40

- From intersection with Ohio S. R. 79 and U. S. 40 via Ohio S. R. 79 to Newark, Ohio
- From Newark, Ohio, to Uhrichsville, Ohio, via Ohio S. R. 16
- From Uhrichsville, Ohio, to Cadiz, Ohio, via U. S. 36 and U. S. 250
- From Cadiz, Ohio, to Pittsburgh, Pa., via U. S. 22
- B. From St. Louis, Mo., to Indianapolis, Ind., via U. S. 40
- From Indianapolis, Ind., to intersection with Ohio S. R. 32 (33) via Ind. S. R. 67
- From intersection of Ohio S. R. 32 (33) and Ind. S. R. 67 to Wapakoneta, Ohio, via Ohio S. R. 32 (33)
- From Wapakoneta, Ohio, to Findlay, Ohio, via U. S. 25
- From Findlay, Ohio, to intersection with Ohio S. R. 14 via U. S. 224
- From intersection of Ohio S. R. 14 and U. S. 224 to intersection of Ohio S. R. 14 and Pa. S. R. 51 via Ohio S. R. 14
- From intersection of Pa. S. R. 51 and Ohio S. R. 14 to Pittsburgh, Pa., via Pa. S. R. 51

EXHIBIT 11

Between Indianapolis, Ind., and St. Louis, Mo.

Regular route:

From Indianapolis, Ind., to St. Louis, Mo., via U. S. 40

Alternate route:

From Indianapolis, Ind., to Springfield, Ill., via U. S. 36

From Springfield, Ill., to St. Louis, Mo., via U. S. 66

EXHIBIT 12

Akron, Ohio, to St. Louis, Mo.

Cleveland, Ohio, to Akron, Ohio

Akron, Ohio, to Chicago, Ill.

Akron, Ohio, to Buffalo, N. Y.

Between Akron, Ohio, and St. Louis, Mo.

Regular route:

From Akron, Ohio, to Findlay, Ohio, via U. S. 224

From Findlay, Ohio, to Wapakoneta, Ohio, via U. S. 25

From Wapakoneta, Ohio, to junction with Ind. S. R. 67 via Ohio S. R. 32 (33)

From intersection of Ind. S. R. 67 and Ohio S. R. 32 (33) to Indianapolis, Ind., via Ind. S. R. 67

From Indianapolis, Ind., to St. Louis, Mo., via U. S. 40

Alternate route:

- A. From Akron, Ohio, to Huntington, Ind., via U. S. 224
- From Huntington, Ind., to intersection with U. S. 36 via Ind. S. R. 9
- From intersection of U. S. 36 and Ind. S. R. 9 to Springfield, Ill., via U. S. 36
- From Springfield, Ill., to intersection of U. S. 66 and Ill. S. R. 140 via U. S. 66
- From intersection of Ill. S. R. 140 and U. S. 66 to intersection with U. S. 67 via Ill. S. R. 140
- From intersection of U. S. 67 and S. R. 140 to St. Louis, Mo., via U. S. 67
- B. From Akron, Ohio, to Huntington, Ind., via U. S. 224
- From Huntington, Ind., to intersection of U. S. 24 with Ill. S. R. 24 via U. S. 24
- From intersection of Ill. S. R. 24 and U. S. 24 to intersection with U. S. 66 via Ill. S. R. 24
- From intersection of U. S. 66 and Ill. S. R. 24 to St. Louis, Mo., via U. S. 66

Between Cleveland, Ohio, and Akron, Ohio

- From Cleveland, Ohio, to intersection of Ohio S. R. 14 and Ohio S. R. 8 via Ohio S. R. 14
- From intersection of Ohio S. R. 8 and Ohio S. R. 14 to Akron, Ohio, via S. R. 8

Between Akron, Ohio, and Chicago, Ill.

- From Akron, Ohio, to intersection of S. R. 8 and S. R. 14 via Ohio S. R. 8
- From intersection of Ohio S. R. 14 and Ohio S. R. 8 to intersection with Ohio S. R. 2 via S. R. 14
- From intersection of S. R. 2 and S. R. 14 via S. R. 2 to intersection of S. R. 2 and S. R. 263 via S. R. 2
- From intersection of S. R. 263 and S. R. 2 to intersection with U. S. 20 via S. R. 263
- From intersection of U. S. 20 and S. R. 263 to Angola, Ind., via U. S. 20
- From Angola, Ind., to Waterloo, Ind., via U. S. 27
- From Waterloo, Ind., to intersection with U. S. 6 and U. S. 41 via U. S. 6
- From intersection of U. S. 41 and U. S. 6 to Chicago, Ill.; via U. S. 41

Alternate route:

- From Akron, Ohio, to Findlay, Ohio, via U. S. 224
- From Findlay, Ohio, to intersection with U. S. 30 and 30 N via U. S. 25

Alternate (From Akron, Ohio, to Van Wert, Ohio, via U. S. 224)

From intersection of U. S. 30 N & S to intersection with U. S. 41 via U. S. 30 N & S

From intersection of U. S. 41 and U. S. 30 to Chicago, Ill., via U. S. 41

Between Akron, Ohio, and Buffalo, N. Y.

Regular route:

From Akron, Ohio, to intersection of Ohio S. R. 91 via S. R. 5

From intersection of S. R. 91 and S. R. 5 to intersection with S. R. 84 via S. R. 91

From intersection of S. R. 84 and S. R. 91 to intersection with U. S. 20 via S. R. 84

Alternate (from intersection of S. R. 91 and S. R. 84 via U. S. 20 to intersection with N. Y. 50)

From intersection of U. S. 84 and U. S. 20 to intersection of N. Y. S. R. 5 via U. S. 20

From intersection New York S. R. 5 and U. S. 20 to Buffalo, N. Y., via N. Y. S. R. 5

EXHIBIT 13

Between Springfield, Ohio, and St. Louis, Mo.

Regular route:

From Springfield, Ohio, to St. Louis, Mo., via U. S. 40

Alternate route:

From Springfield, Ohio, to Dayton, Ohio, via Ohio S. R. 4

From Dayton, Ohio, to Cincinnati, Ohio, via Ohio S. R. 4

From Cincinnati, Ohio, to St. Louis, Mo., via U. S. 50

EXHIBIT 14

Between Indianapolis, Ind., and Dayton, Ohio

Regular route:

From Indianapolis, Ind., to intersection of U. S. 40 and U. S. 35 via U. S. 40

From intersection of U. S. 35 and U. S. 40 to Dayton, Ohio, via U. S. 35

Alternate route:

From Indianapolis, Ind., to intersection of U. S. 40 and U. S. 25 via U. S. 40

From intersection of U. S. 25 and U. S. 40 to Dayton, Ohio, via U. S. 25

EXHIBIT 15

Between Toledo, Ohio, and Indianapolis, Ind.

Between Toledo, Ohio, and St. Louis, Mo.

Between Toledo, Ohio, and Indianapolis, Ind.

Regular route:

From Toledo, Ohio, to Findlay, Ohio, via U. S. 25 and U. S. 68

From Findlay, Ohio, to Wapakoneta, Ohio, via U. S. 25

From Wapakoneta, Ohio, to intersection with Ohio S. R.

32 (33) and Indiana S. R. 67 via Ohio S. R. 32 (33)

From intersection of Indiana S. R. 67 and Ohio S. R.

32 (33) to Indianapolis, Ind., via Indiana S. R. 67

Alternate route:

From Toledo, Ohio, to Angola, Ind., via U. S. 20

From Angola, Ind., to Ft. Wayne, Ind., via U. S. 27

From Ft. Wayne, Ind., to Huntington, Ind., via U. S. 24

From Huntington, Ind., to intersection of S. R. 9 and

Indiana S. R. 67 via S. R. 9

From intersection of S. R. 67 and S. R. 9 to Indianapolis,

Ind., via Indiana S. R. 67

Between Toledo, Ohio, and St. Louis, Mo.

Regular route:

From Toledo, Ohio, to Findlay, Ohio, via U. S. 25 and U. S. 68

From Findlay, Ohio, to Wapakoneta, Ohio, via U. S. 25

From Wapakoneta, Ohio, to intersection, Ohio S. R. 32

(33) and Indiana S. R. 67 via Ohio S. R. 32 (33)

From intersection of Indiana S. R. 67 and Ohio S. R. 32

(33) to Indianapolis, Ind., via Indiana S. R. 67

From Indianapolis, Ind., to St. Louis, Mo., via U. S. 40

Alternate route:

From Toledo, Ohio, to intersection with U. S. 25 and

U. S. 40 via U. S. 25

From intersection of U. S. 40 and U. S. 25 to St. Louis,

Mo., via U. S. 40

EXHIBIT 16

Between Indianapolis, Ind., and Detroit, Mich.

Regular route:

From Indianapolis, Ind., to the intersection of Indiana S. R. 67 and Ohio S. R. 32 (33) via Indiana S. R. 67

From intersection of 32 (33) via Indiana S. R. 67 to Wapakoneta, Ohio, via Ohio 32 (33)

From Wapakoneta, Ohio, to Detroit, Mich., via U. S. 25

Alternate (Between Toledo and Detroit U. S. 24)

Alternate route:

From Indianapolis, Ind., to intersection of Indiana S. R. 67 and Ohio 32 (33) via Indiana S. R. 67

From intersection of Ohio S. R. 32 (33) to Celina, Ohio
From Celina, Ohio, to Van Wert, Ohio, via U. S. 127
From Van Wert to Findlay, Ohio, via U. S. 224
From Findlay to Detroit, Mich., via U. S. 25.
Alternate (Between Toledo and Detroit U. S. 24)

EXHIBIT 17

Between Pittsburgh, Pa., and Indianapolis, Ind.

Regular route:

From Pittsburgh, Pa., to Cambridge, Ohio, via U. S. 22
From Cambridge, Ohio, to Indianapolis, Ind., via U. S. 40

Alternate route:

From Pittsburgh, Pa., to Mansfield, Ohio, via U. S. 30
From Mansfield, Ohio, to Van Wert, Ohio, via U. S. 30N
From Van Wert, Ohio, to intersection of U. S. 127 and U. S. 40 via U. S. 127
From intersection of U. S. 40 and U. S. 127 to Indianapolis, Ind., via U. S. 40

EXHIBIT 18

Between Louisville, Ky., and Cleveland, Ohio

Regular route:

From Louisville, Ky., to intersection of U. S. 31 and Ind. S. R. 9 via U. S. 31, 31W and 31E
From intersection of Ind. S. R. 9 and U. S. 31 to intersection of S. R. 9 and S. R. 7 via S. R. 9
From intersection of S. R. 7 and S. R. 9 to Columbus, Ind., via S. R. 7
From Columbus, Ind., to Indianapolis, Ind., via U. S. 31 (Alternate U. S. 31 between Louisville and Indianapolis)
From Indianapolis, Ind., to intersection of S. R. 67 and Ohio S. R. 32 (33) via Ind. S. R. 67
From intersection of Ohio S. R. 32 (33) and Ind. S. R. 67 via Ohio S. R. 32 (33) to Wapakoneta, Ohio
From Wapakoneta, Ohio, to Lodi, Ohio, via U. S. 224
From Lodi, Ohio, to Cleveland, Ohio, via U. S. 42 (alternate)
Ohio S. R. 3 to Cleveland, Ohio

Alternate route:

From Louisville, Ky., to intersection of U. S. 31 and U. S. 50 via U. S. 31
From intersection of U. S. 50 and U. S. 31 to intersection of Ohio S. R. 128 via U. S. 50
From intersection of Ohio S. R. 128 and U. S. 50 to intersection of S. R. 128 and Ohio S. R. 4 via Ohio S. R. 128

From intersection of Ohio S. R. 4 and Ohio S. R. 128 to intersection of Ohio S. R. 4 and U. S. 40 via Ohio S. R. 4

From intersection of U. S. 40 and Ohio S. R. 4 to intersection of U. S. 40 and U. S. 42 via U. S. 40

From intersection of U. S. 42 and U. S. 40 to Cleveland, Ohio, via U. S. 42 (alternate via U. S. 3 from intersection of U. S. 3 and U. S. 42 to Cleveland, Ohio)

EXHIBIT 19

Between Louisville, Ky., and Pittsburgh, Pa.

Regular route:

From Louisville, Ky., to intersection of U. S. 31 and U. S. 50 via U. S. 31

From intersection of U. S. 50 and U. S. 31 to Cincinnati, Ohio, via U. S. 50

From Cincinnati, Ohio, to intersection of U. S. 42 and U. S. 40 via U. S. 42

From intersection of U. S. 40 and U. S. 42 to Cambridge, Ohio, via U. S. 40

From Cambridge, Ohio, to Pittsburgh, Pa., via U. S. 22

Alternate route:

From Louisville, Ky., to intersection of U. S. 31 and Ind. S. R. 9 via U. S. 31, 31E and 31W

From intersection of Ind. S. R. 9 and U. S. 31 to intersection of S. R. 9 and S. R. 7 via Ind. S. R. 9

From intersection of Ind. S. R. 7 and Ind. S. R. 9 to Columbus, Ind., via S. R. 7

From Columbus, Ind., to Indianapolis, Ind., via U. S. 31 (alternate between Louisville, Ky., and Indianapolis, Ind. U. S. 31)

From Indianapolis, Ind., to Cambridge, Ohio, via U. S. 40

From Cambridge, Ohio, to Pittsburgh, Pa., via U. S. 22

Between Cincinnati, Ohio, and Pittsburgh, Pa.

From Cincinnati, Ohio, to intersection of U. S. 42 and U. S. 40 via U. S. 42

From intersection of U. S. 42 and U. S. 40 to Washington, Pa., via U. S. 40

From Washington, Pa., to Pittsburgh, Pa., via U. S. 19

EXHIBIT 20

Between Louisville, Ky., and Chicago, Ill.

Regular route:

From Louisville, Ky., to intersection of U. S. 31 and Ind. S. R. 9 via U. S. 31, 31E and 31W

From intersection of Ind. S. R. 9 and U. S. 31 to intersection of S. R. 9 and S. R. 7 via Ind. S. R. 9

From intersection of Ind. S. R. 7 and Ind. S. R. 9 to Columbus, Ind., via Ind. S. R. 7

From Columbus, Ind., to Indianapolis, Ind., via U. S. 31

From Indianapolis, Ind., to intersection of U. S. 52 and U. S. 41 via U. S. 52

From intersection of U. S. 41 and U. S. 52 to Chicago, Ill., via U. S. 41

Alternate route:

From Louisville, Ky., to Terre Haute, Ind., via U. S. 150

From Terre Haute, Ind., to Chicago, Ill., via U. S. 41

EXHIBIT 21

Between Indianapolis, Ind., and Chicago, Ill.

Regular route:

From Indianapolis, Ind., to intersection of U. S. 52 and U. S. 41 via U. S. 52

From intersection of U. S. 41 and U. S. 52 to Chicago, Ill., via U. S. 41

Alternate route:

A. From Indianapolis, Ind., to Rockville, Ind., via U. S. 36

From Rockville, Ind., to Chicago, Ill., via U. S. 41

B. From Indianapolis, Ind., to Crawfordsville, Ind., via Ind. S. R. 34

From Crawfordsville, Ind., to intersection of Ind. S. R. 43 and U. S. 52 via Ind. S. R. 43

From intersection of U. S. 52 and Ind. S. R. 43 to intersection of U. S. 52 and U. S. 41 via U. S. 52

From intersection of U. S. 41 and U. S. 52 to Chicago, Ill., via U. S. 41

C. From Indianapolis, Ind., to intersection of U. S. 31 and U. S. 6 via U. S. 31

From intersection of U. S. 6 and U. S. 31 to intersection of U. S. 41 via U. S. 6

From intersection of U. S. 41 and U. S. 6 to Chicago, Ill., via U. S. 41

EXHIBIT 22

Between Chicago, Ill., and Cincinnati, Ohio

Regular route:

From Chicago, Ill., to intersection of U. S. 41 and U. S. 52 via U. S. 41

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From intersection of U. S. 52 and U. S. 41 to Cincinnati, Ohio,
via U. S. 52

Alternate route:

A. From Chicago, Ill., to intersection of U. S. 41 and
U. S. 30 via U. S. 41

From intersection of U. S. 30 and U. S. 41 to Van
Wert, Ohio, via U. S. 30

From Van Wert, Ohio, to Cincinnati, Ohio, via
U. S. 127

B. From Chicago, Ill., to intersection of U. S. 41 and
U. S. 6 via U. S. 41

From intersection of U. S. 6 and U. S. 41 to inter-
section of U. S. 6 and U. S. 31 via U. S. 6

From intersection of U. S. 31 and U. S. 6 to Indian-
apolis, Ind., via U. S. 31

From Indianapolis, Ind., to Cincinnati, Ohio, via
U. S. 52

EXHIBIT 23

Between Chicago, Ill., and Pittsburgh, Pa.

Regular route:

From Chicago, Ill., to intersection of U. S. 41 and U. S. 6 via
U. S. 41

From intersection of U. S. 6 and U. S. 41 to Waterloo, Ind.,
via U. S. 6

From Waterloo, Ind., to Angola, Ind., via U. S. 27

From Angola, Ind., to Toledo, Ohio, via U. S. 20

From Toledo, Ohio, to Cleveland, Ohio, via Ohio S. R. 2

From Cleveland, Ohio, to intersection of U. S. 422 and U. S.
19 via U. S. 422

From intersection of U. S. 19 and U. S. 422 to Pittsburgh,
Pa., via U. S. 19

Alternate route:

From Chicago, Ill., to Cleveland, Ohio, via U. S. 20

From Cleveland, Ohio, to intersection of U. S. 422 and U. S.
19 via U. S. 422

From intersection of U. S. 19 and U. S. 422 to Pittsburgh,
Pa., via U. S. 19

From Chicago, Ill., to intersection of U. S. 41 and U. S. 24
via U. S. 41

From intersection of U. S. 24 and U. S. 41 to intersection of
U. S. 24 and U. S. 224 via U. S. 24

From intersection of U. S. 224 and U. S. 24 to intersection of
U. S. 224 and U. S. 30 via U. S. 224

From intersection of U. S. 30 and U. S. 224 to Pittsburgh, Pa.,
via U. S. 30

EXHIBIT 24

Between Detroit, Mich., and Louisville, Ky.

From Detroit, Mich., to Toledo, Ohio, via U. S. 24 and U. S. 25 alternately

From Toledo, Ohio, to Wapakoneta, Ohio, via U. S. 25

From Wapakoneta, Ohio, to intersection of Ohio S. R. 32 (33) and Indiana S. R. 67 via Ohio S. R. 32 (33)

From intersection of S. R. 67 and Ohio S. R. 32 (33) to Indianapolis, Ind., via Indiana S. R. 67

From Indianapolis, Ind., to Louisville, Ky., via U. S. 31, 31E and 31W

Alternate (From Indianapolis, Ind., to Louisville, Ky., via U. S. 31 to Columbus, Ind., thence on Indiana S. R. 7 to Indiana S. R. 9, thence on Indiana S. R. 9 to intersection of U. S. 31, and thence on U. S. 31, 31E, and 31W to Louisville)

EXHIBIT 25

Between Dayton, Ohio, and Springfield, Ohio

Regular route:

From Dayton, Ohio, to Springfield, Ohio, via Ohio S. R. 4

Alternate route:

From Dayton, Ohio, to Vandalia, Ohio, via U. S. 25

From Vandalia to Springfield, Ohio, via U. S. 40

EXHIBIT 26

Between Pittsburgh, Pa., and Columbus, Ohio

Regular route:

From Pittsburgh, Pa., to Cambridge, Ohio, via U. S. 22

From Cambridge, Ohio, to Columbus, Ohio, via U. S. 40

Alternate route:

A. From Pittsburgh, Pa., to Washington, Pa., via U. S. 19

From Washington, Pa., to Columbus, Ohio, via U. S. 40

B. From Pittsburgh, Pa., to Cadiz, Ohio, via U. S. 22

From Cadiz, Ohio, to Uhrichsville, Ohio, via U. S. 36 and U. S. 250

From Uhrichsville, Ohio, to Newark, Ohio, via Ohio S. R. 16

From Newark, Ohio, to intersection of Ohio S. R. 13 and U. S. 40 via Ohio S. R. 13

From intersection of U. S. 40 and Ohio S. R. 13 to Columbus, Ohio, via U. S. 40

EXHIBIT 27

Between Cleveland, Ohio, and Pittsburgh, Pa.

From Cleveland, Ohio, to intersection of Ohio S. R. 14 and

Ohio S. R. 8 via Ohio S. R. 14

From intersection of Ohio S. R. 8 and Ohio S. R. 14 to intersection of Ohio S. R. 8 and U. S. 30 via Ohio S. R. 8

From intersection of U. S. 30 and Ohio S. R. 8 to Pittsburgh, Pa., via U. S. 30

Alternate route:

From Cleveland, Ohio, to intersection of U. S. 422 and U. S. 19 via U. S. 422

From intersection of U. S. 19 and 422 to Pittsburgh, Pa., via U. S. 19

EXHIBIT 28

Between Columbus, Ohio, and St. Louis, Mo.

Regular route:

From Columbus, Ohio, to St. Louis, Mo., via U. S. 40

Alternate route:

A. From Columbus, Ohio, to Indianapolis, Ind., via U. S. 40

From Indianapolis, Ind., to intersection of U. S. 36 and U. S. 66 via U. S. 36

From intersection of U. S. 66 and U. S. 36 to St. Louis Mo., via U. S. 66

B. From Columbus, Ohio, to Indianapolis, Ind., via U. S. 40

From Indianapolis, Ind., to intersection of U. S. 36 and U. S. 45 via U. S. 36

From intersection of U. S. 45 and U. S. 36 to intersection of Ill. S. R. 16 via U. S. 45

From intersection of Ill. S. R. 16 and U. S. 45 to intersection of Ill. S. R. 16 and U. S. 66 via Ill. S. R. 16

From intersection of U. S. 66 and Ill. S. R. 140 via U. S. 66

From intersection of Ill. S. R. 140 and U. S. 66 to intersection of Ill. S. R. 140 and U. S. 67 via Ill. S. R. 140

From intersection of U. S. 67 and Ill. S. R. 140 to St. Louis, Mo., via U. S. 67

EXHIBIT 29

Between Cleveland, Ohio, and Cincinnati, Ohio

Regular route:

From Cleveland, Ohio, to Cincinnati, Ohio, via U. S. 42

Alternate route:

From Cleveland, Ohio, to intersection of Ohio S. R. 254 and Ohio S. R. 57 via Ohio S. R. 254

From intersection of Ohio S. R. 57 and Ohio S. R. 254 to intersection of Ohio S. R. 57 and Ohio S. R. 59 via Ohio S. R. 57

From intersection of Ohio S. R. 59 and Ohio S. R. 57 to intersection of Ohio S. R. 59 and Ohio S. R. 4 via Ohio S. R. 59

From intersection of Ohio S. R. 4 and Ohio S. R. 59 to Dayton, Ohio, via Ohio S. R. 4

From Dayton, Ohio, to Cincinnati, Ohio, via U. S. 25

Between Cleveland, Ohio, and Cincinnati, Ohio

From Cleveland, Ohio, to Cincinnati, Ohio, via Ohio S. R. 3

EXHIBIT 33

Between Buffalo, N. Y., and Pittsburgh, Pa.

Regular route:

From Buffalo, N. Y., to Erie, Pa., via U. S. 20 and N. Y. S. R. 5 alternately

From Erie, Pa., to Pittsburgh, Pa., via U. S. 19

Between St. Louis, Mo., and Buffalo, N. Y.

Regular route:

From St. Louis, Mo., to Indianapolis, Ind., via U. S. 40

From Indianapolis, Ind., to intersection Ind. S. R. 67 and Ohio S. R. 32 (33) via Ind. S. R. 67

From intersection of Ohio S. R. 32 (33) and Ind. S. R. 67 to Wapakoneta, Ohio, via Ohio S. R. 32 (33)

From Wapakoneta to Findlay, Ohio, via U. S. 25

From Findlay, Ohio, to Lodi, Ohio, via U. S. 224

From Lodi, Ohio, to Cleveland, Ohio, via U. S. 42

From Cleveland, Ohio, to intersection of U. S. 20 and Ohio S. R. 84 via Ohio S. R. 84

From intersection of U. S. 20 and Ohio S. R. 84 to Buffalo, N. Y., via U. S. 20 and N. Y. S. R. 5, alternatively

Alternate route:

From St. Louis, Mo., to Cincinnati, Ohio, via U. S. 50

From Cincinnati, Ohio, to Cleveland, Ohio, via Ohio S. R. 3

From Cleveland, Ohio, to intersection of U. S. 20 and Ohio S. R. 84 via Ohio S. R. 84

From intersection of U. S. 20 and Ohio S. R. 84 to Buffalo, N. Y., via U. S. 20 and N. Y. S. R. 5, alternatively

Between Buffalo, N. Y., and Chicago, Ill.

Regular route:

From Buffalo, N. Y., to intersection of U. S. 20 and N. Y. S. R. 5 via N. Y. S. R. 5

From intersection of N. Y. S. R. 5 and U. S. 20 to Cleveland, Ohio, via U. S. 20 and Ohio S. R. 84 alternatively
 From Cleveland, Ohio, to Toledo, Ohio, via Ohio S. R. 2
 From Toledo, Ohio, to intersection of Ohio S. R. 263 and U. S. 20 via Ohio S. R. 263
 From intersection of U. S. 20 and Ohio S. R. 263 to intersection of U. S. 20 and U. S. 27 via U. S. 20
 From intersection of U. S. 27 and U. S. 20 to intersection of U. S. 27 and U. S. 6 via U. S. 27
 From intersection of U. S. 6 and U. S. 27 to intersection of U. S. 41 and U. S. 6 via U. S. 6
 From intersection of U. S. 41 and U. S. 6 to Chicago, Ill., via U. S. 41

Between Indianapolis, Ind., and Buffalo, N. Y.

Regular route:

From Indianapolis, Ind., to intersection Ind. S. R. 67 and Ohio S. R. 32 (33) via Ind. S. R. 67.
 From intersection of Ohio S. R. 32 (33) and Ind. S. R. 67 to Wapakoneta, Ohio, via Ohio S. R. 32 (33)
 From Wapakoneta, Ohio, to Findlay, Ohio, via U. S. 25
 From Findlay, Ohio, to Lodi, Ohio, via U. S. 224
 From Lodi, Ohio, to Cleveland, Ohio, via U. S. 42
 From Cleveland, Ohio, to intersection of U. S. 20 and Ohio S. R. 84 via Ohio S. R. 84
 From intersection of U. S. 20 and Ohio S. R. 84 to Buffalo, N. Y., via U. S. 20 and N. Y. S. R. 5 alternatively

Between Louisville, Ky., and Buffalo, N. Y.

Regular route:

From Louisville, Ky., to Cleveland, Ohio, via U. S. 42
 From Cleveland to intersection of U. S. 20 and Ohio S. R. 84 via Ohio S. R. 84
 From intersection of U. S. 20 and Ohio S. R. 84 to Buffalo, N. Y., via U. S. 20 and N. Y. S. R. 5 alternatively

APPENDIX B

Authority granted

Service in accordance with the findings in the accompanying report is authorized (1) between Chicago, Ill., and St. Louis, Mo., (2) between St. Louis and Cincinnati, Ohio, (3) between Louisville, Ky., and Cincinnati, (4) between Indianapolis, Ind., and Cincinnati, (5) between Indianapolis and Cleveland, Ohio, (6) between St. Louis and Dayton, Ohio, (7) between Louisville and Indianapolis, (8) between St. Louis and Louisville, (9) between St. Louis and Cleveland, (10) between St. Louis and Pittsburgh,

Pa., (11) between Indianapolis and St. Louis, (12) from Akron, Ohio, to St. Louis, (13) from Indianapolis to Detroit, Mich., (14) from Indianapolis to Pittsburgh, (15) between Louisville and Pittsburgh, (16) between Louisville and Chicago, Ill., (17) between Indianapolis and Chicago, (18) between Cincinnati and Chicago, (19) from Chicago to Pittsburgh, (20) between Detroit and Louisville, (21) from Cleveland to Pittsburgh, (22) between Buffalo, N. Y., and St. Louis, and (23) between Buffalo and Indianapolis, over the highways listed below or any combination thereof:

Route No.	Over highway	Between
1	U. S. Highway 66	St. Louis and Chicago.
2	Illinois Highway 48	Junction of U. S. Highway 66 with Illinois Highway 48 and Onarga, Ill.
3	U. S. Highway 45	Onarga and the junction of U. S. Highway 45 with U. S. Highway 66.
6	U. S. Highway 36	Springfield, Ill., and the junction of U. S. Highway 36 with Indiana Highway 9.
7	U. S. Highway 40	St. Louis and Cambridge, Ohio.
8	U. S. Highway 50	St. Louis and Miami, Ohio.
9	U. S. Highway 50	Terre Haute, Ind., and Louisville.
10	U. S. Highway 52	Junction of U. S. Highway 41 with U. S. Highway 52 near Gravel Hill, Ind., and Cincinnati.
11	U. S. Highway 31	Junction of U. S. Highway 6 with U. S. Highway 31 and Sellersburg, Ind.
12	U. S. Highway 31W or 31E	Sellersburg and Louisville.
13	U. S. Highway 41	Chicago and Terre Haute.
14	U. S. Highway 20	Chicago and Cleveland.
15	U. S. Highway 6	Junction of U. S. Highway 41 with U. S. Highway 6 and Waterloo, Ind.
16	U. S. Highway 27	Waterloo and Angola, Ind.
17	Indiana Highway 9	Junction of U. S. Highway 36 with Indiana Highway 9 and Huntington, Ind.
18	U. S. Highway 24	Chenoa, Ill., and Huntington, Ind.
19	Indiana Highway 87	Indianapolis and Indiana-Ohio State line.
20	Ohio Highway 29	Indiana-Ohio State line and St. Marys, Ohio.
21	U. S. Highway 33	St. Marys, Ohio, and Wapakoneta.
22	U. S. Highway 224	Huntington and Deerfield, Ohio.
23	U. S. Highway 127	Cincinnati and Van Wert.
24	U. S. Highway 24	Toledo and the junction of U. S. Highway 24 with U. S. Highway 25.
25	U. S. Highway 25	Wapakoneta and Detroit.
26	U. S. Highway 35	Junction of U. S. Highway 40 with U. S. Highway 35 and Dayton.
27	U. S. Highway 25	Dayton and Vandalia, Ohio.
30	Ohio Highway 264	Cleves, Ohio, and Cincinnati.
31	Ohio Highway 128	Miami and Hamilton.
32	U. S. Highway 42	Louisville and Cleveland.
33	U. S. Highway 30	Junction of U. S. Highway 41 with U. S. Highway 30 and Delphos, Ohio.
34	U. S. Highway 30N	Delphos and Mansfield.
35	U. S. Highway 30	Mansfield and Pittsburgh.
36	Ohio Highway 2	Toledo and Cleveland.
37	Ohio Highway 3	Columbus and Cleveland.
38	Ohio Highway 79	Hebron and Newark, Ohio.
39	Ohio Highway 16	Newark and Coshocton.
40	U. S. Highway 36	Coshocton and Cadiz, Ohio.
41	U. S. Highway 22	Cambridge and Pittsburgh.
42	Ohio Highway 14	Deerfield and Ohio-Pennsylvania State line.
43	Pennsylvania Highway 51	Ohio-Pennsylvania State line and Pittsburgh.
44	U. S. Highway 39	Pittsburgh and Portersville, Pa.
45	U. S. Highway 422	Portersville and Cleveland.
46	Ohio Highway 8	Canton and Bedford, Ohio.
47	Ohio Highway 14	Bedford and Cleveland.
48	Ohio Highway 64	Cleveland and Ashtabula.
49	U. S. Highway 20	Ashtabula and Big Tree, N. Y.
50	New York Highway 5	Silver Creek and Buffalo.
51	U. S. Highway 62	Big Tree and Buffalo.

ORDER

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 7th day of October, A. D. 1942

No. MC-3339

GLOBE CARTAGE COMPANY, INC., COMMON CARRIER APPLICATION

No. MC-3340

GLOBE CARTAGE COMPANY, INC., CONTRACT CARRIER APPLICATION

Investigation of the matters and things involved in these proceedings having been made, and said division on the date hereof having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That application in No. MC-3340 be, and it is hereby, denied.

It is further ordered, That application in No. MC-3339, except to the extent granted in said report, be, and it is hereby, denied.

And it is further ordered, That this order shall become effective November 24, 1942.

By the Commission, division 5.

[SEAL]

W. P. BARTEL, *Secretary.*

Exhibit "B" to Complaint

INTERSTATE COMMERCE COMMISSION

No. MC-3339¹

GLOBE CARTAGE COMPANY, INC., COMMON CARRIER APPLICATION

Decided August 4, 1943

On reconsideration, findings in prior reports, 41 M. C. C. 313 and 41 M. C. C. 303, modified. Applicants found entitled to authority to continue operations as common carriers by motor vehicle of general commodities with certain exceptions, between certain points in Illinois, Indiana, Kentucky, Michigan, Missouri, New York, Ohio, and Pennsylvania, over regular routes, in the trans-

¹ This report also embraces No. MC-3340, Globe Cartage Company, Inc., Contract Carrier Application; No. MC-70614, The Barnett Trucking Company Common Carrier Application; and No. MC-23458, The Barnett Trucking Company Contract Carrier Application.

portation of commodities which are moving on bills of lading of freight forwarders. Issuance of certificates approved upon compliance by applicants with certain conditions, and applications in all other respects denied.

Appearances as shown in prior reports with addition of Ezra Weiss for applicant and Robert J. McBride and J. Manley Head for intervener in Nos. MC-3339 and MC-3340.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

In the prior report in Nos. MC-3339 and MC-3340, 41 M. C. C. 313, division 5 found applicant, hereafter referred to as Globe, entitled to a "grandfather" certificate authorizing continuance of operations as a common carrier by motor vehicle in interstate or foreign commerce, of general commodities, over specified regular routes, between, or from and to, specified points in the territory extending from St. Louis, Mo., on the west, to Buffalo, N. Y., and Pittsburgh, Pa., on the east, and from Louisville, Ky., on the south, to Chicago, Ill., on the north. The applications were in all other respects denied.

In the prior report in Nos. MC-70614 and MC-23458, 41 M. C. C. 303, division 5 found applicant, hereafter referred to as Barnett, entitled to a "grandfather" certificate authorizing continuance of operations as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, over a specified route between Pittsburgh and Cincinnati, Ohio, serving Columbus and Dayton, Ohio, as intermediate points. The applications were in all other respects denied.

Intervener. The Regular Common Carrier Conference of The American Trucking Associations, Inc., and numerous rail and motor-carrier protestants filed petitions for reconsideration in Nos. MC-3339 and MC-3340. One of the petitions seeks oral argument. Applicant and a number of motor-carrier interveners filed petitions for reconsideration and oral argument in Nos. MC-70614 and MC-23458. All of the protestants and interveners urge that division 5 erred in failing "to restrict the authority" granted to applicants to traffic which is, at the time of transportation by them, in the primary custody of and moving on bills of lading of freight forwarders, as defined in section 402 (a) (5) of part IV of the Interstate Commerce Act. Certain protestants in Nos. MC-3339 and MC-3340 urge that division 5 erred in failing "to restrict and limit" the authority granted to Globe to traffic which is in the primary custody of and moving on bills of lading of Universal Carloading & Distributing Company, and "to truck-load movements only." Neither protestants nor interveners ques-

tion applicants' rights to authority to continue operations as motor carriers of general commodities between the points and over the routes specified in the prior reports. In its petition, Barnett urges that it is entitled to authority to serve numerous points in Ohio, Pennsylvania, and New York in addition to those specified by division 5. Upon consideration of the petitions and of the records herein, we have vacated the orders entered by division 5 and reopened the proceedings for reconsideration. The questions raised in the petitions have been fully developed therein and on the records, and we have therefore denied the requests for oral argument.

Applicants have been engaged in bona fide operations, without interruption, since prior to June 1, 1935, transporting by motor vehicle for compensation, in interstate or foreign commerce, general commodities, except commodities in bulk and those of unusual length, height, or weight. During this entire period, Globe and Barnett have transported only traffic tendered to them by the Universal Carloading & Distributing Company and the National Carloading Corporation, respectively. Each of the latter is a freight forwarder as defined in part IV of the act. In the prior reports herein, following our decisions in *Acme Fast Freight, Inc.*, Common Carrier Application, 8 M. C. C. 211, and *Bleich Common Carrier Application*, 27 M. C. C. 9, division 5 found that applicants have been and are common carriers. None of the petitioners question these findings. Part IV of the act was added in 1942. In section 402 (a) (3), it defines freight forwarders as follows:

"The term 'freight forwarder' means any person which (otherwise than as a carrier subject to part I, II, or III of this Act) holds itself out to the general public to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to part I, II, or III of this Act."

This definition indicates quite plainly the character of service which freight forwarders perform, and it furnishes no basis for changing our conception of freight forwarders disclosed in the many decisions, including those cited above, in which we considered the nature of their operations prior to the enactment of part IV. In this connection, it should be noted that section 418

of part IV prohibits freight forwarders from employing or utilizing the instrumentalities of any carriers other than common carriers by motor vehicle, railroad, air, or water except in the performance within terminal areas of transfer, collection or delivery services. The enactment of part IV of the act in no way affects the soundness of our decisions referred to above. We can perceive no reason for departing from the views expressed therein, and we accordingly affirm the findings of division 5 that applicants have been and are common carriers by motor vehicle.

Barnett contends that it should be granted authority to serve various points named in its application. It refers to the recommendation of the examiner that it be authorized to operate over a specified route between Pittsburgh and Cleveland, Ohio, serving Akron, Canton, and Youngstown, Ohio, as intermediate points. An examination of the record discloses that the only traffic transported by it between these points prior to June 1, 1935, was a single shipment, moved in March 1932 from Cleveland to Pittsburgh. There was no further operation between these points until some time in 1936. Its operations between other points and the operations conducted by Globe are accurately described in the prior reports. In our opinion, there is no basis for the granting of authority under the "grandfather" clause of the act to either Barnett or Globe except between the points and over the routes specified by division 5 in the prior reports.

We come now to the contentions of protestants and interveners that division 5 failed properly "to restrict the authority" granted to applicants. Division 5 found that we cannot, consistently with applicants' common-carrier status, restrict their service to particular shippers. We believe this is a correct statement of the law. Section 203 (a) (14) of the act provides that the term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle of passengers or property for compensation. A motor carrier whose service is restricted or limited to particular shippers of the ordinary kind obviously would not be a common carrier. Applicants are, however, as we have already determined, common carriers and are entitled to authority to continue operations as such. We are without power to restrict or limit their operations in a manner which would change their status from that of common carriers.

We are satisfied, however, that, in the circumstances here present, the relation between applicants and the freight forwarders should not be treated the same as that existing between an ordinary shipper and a motor common carrier. We pointed out in Bleich Common Carrier Application, supra, that the forwarder

is not like an ordinary shipper who tenders its own goods to a carrier for transportation. The forwarder merely tenders for transportation freight belonging to the general public, which it has accepted and assembled as the result of an understanding with many shippers or consignees that it will undertake to have the same transported to ultimate destinations. During the "grandfather" period, the freight forwarders have tendered to applicants, and applicants have transported, not traffic belonging to the forwarders but freight belonging to the general public, which the forwarders accepted and assembled as the result of the understanding with the shippers or consignees thereof that they would undertake to have the same transported. The facts which satisfy the requirement, insofar as applicants are concerned, that to be a common carrier there must be a holding out to transport for the general public are, first, that the forwarders dealt with the shipping public in general and did not limit their activities to selected shippers, and, second, that applicants transported traffic of the shipping public in general which was assembled by the forwarders as a result of the latter's undertaking to have the same transported. Under these circumstances, we think the freight forwarders must be treated, not as ordinary shippers, but as intermediary agencies through which applicants held themselves out to the general public to engage in the transportation of property by motor vehicle. To grant applicants authority to transport only traffic assembled by freight forwarders would enable them to continue all bona fide common-carrier operations in which they have been engaged during the "grandfather" period. They are entitled to no more or no less than this under the "grandfather" clause of section 206 (a) of the act. The issuance to them of certificates authorizing the transportation of general commodities (with the exceptions previously indicated) which are at the time moving on bills of lading of freight forwarders, would effectively accomplish this purpose.

Applicants' operations during the "grandfather" period may be likened to the operations of common carriers of special commodities. In cases too numerous to require citation, we have found that common carriers who have transported special commodities only are entitled, not to authority to transport general commodities, but to authority to continue transporting such special commodities. Common carriers of petroleum products, in bulk, in tank trucks, furnish an example: Obviously only a small part of the general public ever has occasion to ship petroleum products, in bulk, in tank trucks. The service of such carriers is therefore in fact available only to a small part of the public.

To "specify the service to be rendered" by "such carriers in the certificates issued to them, in accordance with the provisions of section 208 (a) of the act, as the transportation of petroleum products, in bulk, in tank trucks, does not, however, constitute a restriction of their service to particular shippers. On the contrary, it constitutes a grant of authority to transport petroleum products, in bulk, in tank trucks, for anyone who offers such traffic for transportation.

Applicants have transported only traffic assembled by freight forwarders. Their service has therefore been rendered only to that part of the public which dealt with freight forwarders. To authorize them to continue the transportation of traffic assembled by freight forwarders would not constitute a restriction of their service to particular shippers. On the contrary, their service would continue to be available to the public to the same extent as it has been during the "grandfather" period. However, to authorize applicants to transport traffic, other than that assembled by freight forwarders, would permit them to enlarge and expand their operations beyond the scope of the transportation businesses in which they have been engaged. The issuance of authority to engage in such enlarged and expanded operations would not be in harmony with the "grandfather" provisions of the act.

We find no merit in the contention of certain protestants that we should "restrict the authority" issued to Globe to "truckload movements only." Its holding out to the general public, in the manner described above, was not limited to the transportation of truckload shipments. In fact, a substantial part of the traffic handled by it consisted of small shipments made by the general public. We think it is entitled to authority to transport both truckload and less-than-truckload shipments. The same protestants urge that we should restrict Globe to the transportation of shipments moving on bills of lading of the single freight forwarder, Universal Carloading & Distributing Company, which has assembled all traffic which Globe has transported during the "grandfather" period. We think that such a limitation is not warranted but that Globe is entitled to authority to transport traffic moving on bills of lading of any freight forwarder.

On reconsideration, we find that applicants are entitled to certificates authorizing operations by them as common carriers of general commodities (except commodities in bulk and those of unusual length, height, or weight) which are at the time moving on bills of lading of freight forwarders, between the points and in the manner described in the findings in the prior reports.

Upon compliance by applicants with the requirements of sections 215 and 217 of the act, and our rules and regulations there-

under, appropriate certificates will be issued. The applications in all other respects will be denied.

PATTERSON, Commissioner, dissenting:

The single issue here is whether a motor carrier which, during the "grandfather" period, and since, has rendered, pursuant to a contractual arrangement, a highly specialized transportation service exclusively for a single forwarder and which has not rendered or held itself out to render transportation service for any other person, can be held to have been operating as a common carrier by motor vehicle and to be entitled to a certificate as a common carrier under section 206 (a) of the act. The service rendered consists of terminal-to-terminal line-haul movement of trucks containing only such merchandise as is loaded therein by such forwarder.

A common carrier, both at common law and under the Interstate Commerce Act, is one that holds itself out to serve the "general public." As such, it is bound, within the scope of its operations, to transport for all impartially. It is the right of the public to use the carrier's facilities and to demand service of it which is the real criterion of whether a particular carrier is a common carrier. *Tap Line Cases*, 234 U. S. 1. Neither the forwarder's patrons nor any portion of the public had or has any such right in the situation here under consideration, the motor-carrier service being available to a single forwarder only under a special contract with it.

It would seem that the bare statement of the situation ought to suffice conclusively to establish the contract-carrier status of such a motor carrier, and doubtless the majority would have so held if the transportation contract had been with a person other than a forwarder. But, confronted by the fact that by section 418 of the act a forwarder is now prohibited from utilizing the services of carriers other than common carriers, except in terminal areas, and that a holding that the considered motor-carrier operations were those of a motor contract carrier would have the effect of preventing the carrier from continuing operations as conducted by it in the past, the majority, in order to avoid such a result, have attempted to stretch and pull the generally recognized and accepted concept of what constitutes a common carrier in support of their conclusion that these operations were those of a common carrier. That conclusion is without support, in my opinion, in fact or in law.

The argument advanced amounts to this: That because a forwarder, in relation to its patrons who tender it small packages or lots of goods, serves the general public, any motor carrier whose services the forwarder may choose to utilize in carrying out its

individual undertakings with its various patrons to have such goods transported ipso facto also serves the general public and becomes therefore a common carrier. The fallacy of this argument lies in the fact that in such a case the motor carrier has no contractual relation whatever with the forwarder's patrons, it undertakes to transport for the forwarder only and with respect to an entirely different unit of transportation, it has no liability to the forwarder's patrons but its liability is to the forwarder only, and the forwarder's relation to the transporting carrier has uniformly been held to be that of a shipper who must be treated by the carrier, if a common carrier, in all respects the same as any other shipper without regard to the forwarder's previous dealings with its patrons. *Interstate Commerce Commission v. Delaware, L. & W. R. Co.*, 220 U. S. 235; *Great Northern Ry. Co. v. O'Connor*, 232 U. S. 508; *Lehigh Valley R. Co. v. United States*, 243 U. S. 444. That the Congress, in subjecting forwarders to regulation under part IV of the Interstate Commerce Act, fully recognized this is definitely and clearly disclosed by the legislative history. That history shows that it was the purpose of that legislation to prevent a forwarder, as a shipper over the line of motor or other carriers, from securing transportation at a less price than common-carrier rates open and available to other shippers. Among other provisions, the provision of section 418 prohibiting the utilization by a forwarder, except in terminal areas, of other than common carriers was in furtherance of that purpose. The effect of the majority holding, and the reasoning in support thereof, is to render this prohibition meaningless by declaring that any motor carrier, even though admittedly a contract carrier and authorized to operate as such, is automatically transformed into a common carrier if any persons, or the only person, engaging its services should happen to be, with or without such carrier's knowledge, a forwarder. And under the same reasoning, a motor carrier utilized by a forwarder in a terminal area would likewise ipso facto become a common carrier although section 418 recognizes that within such areas a forwarder may utilize either a contract or a common carrier. The Commission in the *Aefne* case, 8 M. C. C. 211, recognized that forwarders employed motor contract carriers as well as motor common carriers. It is now held by the majority here that there can be no such thing as a motor contract carrier of forwarder shipments.

Failure to recognize the clear distinction between the dealings of the forwarder with its patrons and the entirely separate and distinct dealings of the forwarder with the motor carrier, and the attempt to combine the two to support the conclusion reached, serve only to produce a confusion of thought obscuring the fundamental issue.

Authority may not be granted under the "grandfather" clause which will permit a carrier to expand its operations beyond the scope of those conducted in the past. The majority concede that to restrict the authorized operations to service for a particular shipper or particular shippers (in this case a forwarder, for the motor carrier had no transportation dealings with anyone else), would be inconsistent with common-carrier status and that a motor carrier, whose service is so limited, "obviously would not be a common carrier." They seek to maintain the integrity of the finding that the operations were in fact those of a common carrier, and at the same time to "effectively accomplish the purpose" of restricting the operations to service for forwarders, by limiting the authority to the transportation of commodities "which are at the time moving on bills of lading of freight forwarders." Their argument is that this is a restriction as to the character of traffic and does not constitute a restriction of service to particular shippers. But, if we look back of the form of the restrictive words to what caused them and what they are intended to cause and do cause, it is obvious that they can have no other effect than to restrict the carrier's service to that for forwarders only, for the only traffic that can possibly be moving at the time on forwarder bills of lading is that tendered to the carrier by forwarders. Where common-carrier operations are lawfully limited to the handling of a particular class of traffic, any person having such traffic to transport is entitled to avail himself of the carrier's service at the published tariff rates named for such service. Here, however, the carrier's service and its published tariff rates consistent with the above restriction can be availed of only by forwarders—not by the forwarder's patrons or by any other person. Thus a shipper, such as Montgomery Ward or Sears Roebuck, desiring to make a shipment over the line of the motor carrier under the same conditions and at the same rate as applicable to a like shipment by a forwarder would be prevented from doing so. It could obtain that particular service, if at all, only by employing the forwarder and paying the forwarder's charges, and even then would have no right to demand of the forwarder that the goods be transported over the line of that particular carrier.

If such a motor carrier is a common carrier, it may not limit its service to a single forwarder, or even to forwarders, but must render like transportation service for others at like rates. It cannot legally enter into a contract with a forwarder for such transportation unless it makes, publishes, and applies for such service a rate open to all. *Kansas City Southern Ry. Co. v. Carl*, 227 U. S. 639; *Chicago & A. R. Co. v. Kirby*, 225 U. S. 155.

If the decision of the majority is sound in principle, their particular forwarders or groups of forwarders are free to utilize par-

ticular "common carriers" whose loaded-truck facilities are devoted exclusively to such forwarders. By reason of the ensuing large and steady volume of traffic, such carriers would presumably be in a position profitably to accord lower rates than common carriers serving shippers generally could afford to maintain. The latter carriers would thus be prevented from handling such traffic at all, either directly at less-than-carload or less-than-truckload rates or for the forwarder at their carload or truckload rates, and the principal occasion for operations of a forwarder, namely, to supplement and coordinate the services offered by regular common carriers by consolidating into carload or truckload lots articles of merchandise which such common carriers would otherwise be called upon to transport in less-than-carload or less-than-truckload lots, would cease to exist.

Considerations of expediency, or of supposed hardship that might result from a finding that the operations were those of a contract carrier do not justify declaring a contract carrier to be a common carrier. If applicants desire authority to operate as common carriers in order that they may continue to serve forwarders as in the past, and, as required of common carriers, to make their services available also to others, they should file an appropriate application.

24

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of August, A. D. 1943

No. MC-3339

GLOBE CARTAGE COMPANY, INC., COMMON CARRIER APPLICATION

No. MC-3340

GLOBE CARTAGE COMPANY, INC., CONTRACT CARRIER APPLICATION

No. MC-70614

THE BARNETT TRUCKING COMPANY COMMON CARRIER APPLICATION

No. MC-23458

THE BARNETT TRUCKING COMPANY CONTRACT CARRIER APPLICATION

It appearing, That on October 7, 1942, the Commission, division 5, entered its reports and orders in the above-entitled matters

granting the applications in certain respects, and denying the applications in all other respects;

It further appearing, That petitions for reconsideration and oral argument have been filed by applicant in Nos. MC-70614 and MC-23458 and by various protestants and interveners in all of the above-entitled proceedings:

It is ordered, Upon further consideration of the records herein, and of the said petitions, that the proceedings be, and they are hereby, reopened for reconsideration on the records as made; that the said orders of October 7, 1942, be, and they are hereby, vacated and set aside; and that the said petitions be, and they are hereby, in all other respects denied.

It further appearing, That, full investigation and reconsideration of the matters and things involved in these proceedings have been made, and that the Commission, on the date hereof, has made and filed its report on reconsideration herein, containing its findings of fact and conclusions thereon, which report and said reports of October 7, 1942, are hereby referred to and made a part hereof:

It is ordered, That the said applications, except to the extent that certificates are granted in the said report on reconsideration, be, and they are hereby, denied, effective October 6, 1943.

By the Commission.

[SEAL]

W. P. BARTEL, *Secretary*.

25

Exhibit C to Complaint

ORDER

INTERSTATE COMMERCE COMMISSION

No. MC-25567 (Sub No. 8)

HANCOCK TRUCK LINES, INC., SUCCESSOR TO GLOBE CARTAGE COMPANY, INC.

Formerly No. MC-3339

GLOBE CARTAGE COMPANY, INC., COMMON-CARRIER APPLICATION

No. MC-3340

GLOBE CARTAGE COMPANY, INC., CONTRACT CARRIER APPLICATION,
EVANSVILLE INDIANA

Present: Charles D. Mahaffie, Commissioner, to whom the matters which are the subject of this order have been assigned.

Upon consideration of the records in the above-entitled proceedings; and good cause appearing:

It is ordered, That the order entered in said proceedings on August 4, 1943, as subsequently modified to become effective February 29, 1944, insofar as it denied the applications, be, and it is hereby, further modified so as to become effective on March 31, 1944.

Dated at Washington, D. C., this 21st day of February, A. D. 1944.

By the Commission, Commissioner Mahaffie.

[SEAL]

W. P. BARTEL, *Secretary*.

26

Exhibit D to complaint

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 13th day of March, A. D. 1944

No. MC-3339

GLOBE CARTAGE COMPANY, INC., COMMON CARRIER APPLICATION

No. MC-3340

GLOBE CARTAGE COMPANY, INC., CONTRACT CARRIER APPLICATION

Now No. MC-25567 (Sub. No. 8)

HANCOCK TRUCK LINES, INC., SUCCESSOR TO GLOBE CARTAGE COMPANY, INC., EVANSVILLE, INDIANA

Upon consideration of the record in the above-entitled proceedings, and of petition of applicant, Hancock Truck Lines, Inc., dated February 18, 1944, for modification of the effective date of the denial order of August 4, 1943, by postponement thereof until December 31, 1944, or for such time as the Commission considers just and reasonable; and good cause appearing:

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

[SEAL]

W. P. BARTEL, *Secretary*.

27

(Entry for March 29, 1944, continued)

And thereupon there was issued out of the office of the Clerk of this Court a writ of summons for the defendants to the United States Marshal.

[Title omitted.]

Stipulation

Filed March 30, 1944

Comes now the plaintiff, Hancock Truck Lines, Inc., by Jacob Weiss, Albert Ward, and Ferdinand Born, its attorneys; come also the defendants United States and Interstate Commerce Commission, by B. Howard Caughran, United States Attorney, their attorney, and it is hereby stipulated by and between the parties that the effective date of the order complained of in the complaint, shall be, and is hereby extended until May 1, 1944, in all respects pursuant to the terms of the telegram received by said United States Attorney on this date from Reidy, such telegram being of the following tenor:

"ND.CA 153 C.W.A. 35 1944 Mar 30 AM 10 31

WUSB6W (TWO 42 GOVT-SB WASHINGTON DC 30 1101A—

B. HOWARD CAUGHRAN—

US ATTORNEY FEDERAL BLDG (INDIANAPOLIS IND)

PURSUANT TO TELEPHONE CONVERSATION OF THIS MORNING COMMISSIONER PORTER HAS AUTHORIZED EXTENSION OF MARCH 31 EFFECTIVE DATE OF ORDER IN HANCOCK TRUCK LINES CASE UNTIL MAY 1, 1944. ORDER TO THAT EFFECT WILL FOLLOW. JUSTICE DEPARTMENT CONSULTED AND CONCURS IN THIS RESULT—

REIDY—

31 1 1944"

And the plaintiff now withdraws its application for a restraining order.

Dated this 30th day of March 1944.

HANCOCK TRUCK LINES, INC.,

By JACOB WEISS,

ALBERT WARD,

FERDINAND BORN,

Its Attorneys.

UNITED STATES AND INTERSTATE
COMMERCE COMMISSION

By (S) B. HOWARD CAUGHRAN,

Their Attorney.

30

(Entry for March 30, 1944 continued)

and which, upon examination, the court now approves, and plaintiff now withdraws its application for a restraining order.

31

In United States District Court

Designation of judges

Comes now Honorable William M. Sparks, Acting Senior United States Circuit Judge, and files assignment of Honorable Sherman Minton, United States Circuit Judge, and Honorable Luther M. Swygert, United States District Judge, to sit as Judges in this cause, which assignment is as follows:

The assignment of two judges by the undersigned being required under Sec. 380a, 28 U. S. C. A., Act of 1937, I hereby designate and assign the Honorable Sherman Minton, United States Circuit Judge in and for the Seventh Judicial Circuit, and the Honorable Luther M. Swygert, United States District Judge for the Northern District of Indiana, to sit as judges in the above entitled cause.

(Signed) WILLIAM M. SPARKS,

*Acting Senior United States Circuit Judge**in and for the Seventh Judicial Circuit.*

CHICAGO, ILLINOIS, April 1, 1944.

33

In the District Court of the United States

[Title omitted.]

Answer of the United States of America

Filed April 5, 1944

Now comes the United States of America, defendant herein, and in answer to the complaint says:

1. Admits the allegations of paragraphs 1 and 2 of the complaint.

2. Admits the allegations of paragraph 3 of the complaint, except denies that this action arises under the Fifth Amendment of the Constitution of the United States.

3. Admits the allegations of paragraph 4 of the complaint but for further answer thereto alleges that so far as the validity of the present order of the Commission is concerned it is immaterial whether plaintiff's operations over its other routes are directly related to the operations over the routes here involved.

4. Admits the allegations of paragraphs 5 and 6 of the complaint.

5. Admits the allegations of paragraph 7 of the complaint
34 but alleges for further answer that Commissioner Rogers
in a separate concurring opinion stated that applicant's
authority should be restricted to carriage for freight forwarders,
and that Commissioner Patterson dissented on the ground that
because applicant carried only for freight forwarders it was a
contract carrier and not a common carrier.

6. Admits the allegations of paragraphs 8 through 10 of the
complaint but refers the Court to the Commission's reports herein
(attached to the complaint as Exhibits A and B) for a more
complete statement concerning the matters mentioned in these
paragraphs than is contained in said paragraphs.

7. Admits the allegations of paragraph 11 of the complaint
except that it denies that the Commission's action was without
right or contrary to law.

8. Admits the allegations of paragraph 12 of the complaint but
alleges that the Commission, at the request of this Court, has now
extended the effective date of its order until May 1, 1944.

9. Admits the allegations of paragraph 13 of the complaint.

10. Admits the allegations of paragraph 14 of the complaint
but denies that any order of the Commission with respect to
Barnett Trucking Company is of any materiality here.

11. Denies the allegations of paragraph 15 of the complaint.

12. In answer to the allegations of paragraph 16 of the com-
plaint alleges that such allegations are immaterial so far as the
validity of the Commission's order is concerned and require no
answer, since plaintiff is required and entitled to carry property
only in accordance with the present order of the Commission if
that is valid.

13. Admits the allegations of paragraph 17 of the complaint,
except denies that the Commission's order is in any respect
35 void, illegal or invalid

14. In answer to paragraph 18 of the complaint admits
that plaintiff has lawfully acquired the business and property of
Globe Carthage Co., Inc. Denies that plaintiff is subjected to
any unlawful injury by the Commission's order. For further
answer alleges that the allegations contained herein as to opera-
tions conducted by plaintiff over these or other routes since the
acquisition of these routes by plaintiff, are immaterial so far as
the validity of the Commission's order is concerned, since these
operations do not in any way relate to the grandfather rights of
plaintiff's predecessor and plaintiff could only acquire what its
predecessor had to give.

Wherefore: It is respectfully prayed that the complaint be dismissed.

ROBERT L. PIERCE,

Robert L. Pierce,

Special Assistant to the Attorney General,

Department of Justice, Washington, D. C.,

Attorney for the United States of America, defendant.

WENDELL BERGE,

Assistant Attorney General.

B. HOWARD CAUGHYAN,

United States Attorney.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the above answer upon each of the following counsel this 4th day of April 1944, by mailing them a copy thereof:

Jacob Weiss, Esquire, 512 Insurance Building, Indianapolis, Indiana.

36 Albert Ward, Esquire, 318 Insurance Building Indianapolis, Indiana.

Ferdinand Born, Esquire, 718 Chamber of Commerce Building, Indianapolis, Indiana.

Nelson Thomas, Esquire, Interstate Commerce Commission, Washington 25, D. C.

ROBERT L. PIERCE,

Robert L. Pierce,

Special Assistant to the Attorney General.

38 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Answer of Interstate Commerce Commission

Filed April 6, 1944

Comes now the Interstate Commerce Commission, hereinafter called the Commission, defendant herein, and for its answer to the complaint filed in the above-entitled proceeding, respectfully shows:

I.

For the purposes of this suit and none other, the Commission admits the allegations of paragraphs 1, 2, and 3 of the com-

plaint, except that it denies the allegation of paragraph 3 that this action arises under or involves any rights under the Fifth Amendment to the Constitution of the United States or any other portion thereof, and the Commission further alleges and shows that the effective date of the Commission's order of August 4, 1943, was on March 28, 1944, further modified so as to extend the effective date thereof from March 31, 1944, to May 1, 1944.

II

Answering paragraph 4 of the complaint, the Commission admits that the plaintiff is and has been a common carrier by motor vehicle in interstate and foreign commerce of general commodities and is now the holder of certain certificates of public convenience and necessity issued by the Commission which differ from that issued by the Commission pursuant to the "grandfather" application of Globe Cartage Company, Inc., hereinafter called Globe, in proceeding No. MC-3339, but the Commission alleges and shows that there is no legal relation, direct or otherwise, between the operations originally performed by the plaintiff and the Globe operations upon which are based the rights subsequently purchased by plaintiff.

III

Answering the allegations of paragraphs 5, 6, 7, 8, 9, 10, and 11 of the complaint, the Commission admits the allegations therein contained, except that the Commission alleges and shows that the quotations from the reports of Division 5 and of the entire Commission in the Globe proceeding, and the statements as to the substance, force and effect of the Commission's reports, orders and actions in said proceeding are not full, true or correct statements thereof, and the Commission respectfully refers the Court to the copies of the reports and orders of the Commission which are attached as Exhibits A, B, C, and D, to the complaint herein for full information as to the Commission's actions in the premises; and except that the Commission denies that as alleged in the last three lines of paragraph 11, the freight forwarder commodities limitation referred to in said paragraph is contrary to law.

IV

Answering paragraphs 12, 13, and 14 of the complaint, the Commission admits the truth thereof, except that subsequent to the bringing of this suit the effective date of the Commission's order of August 4, 1943, has been further postponed to May 1, 1944;

and the Commission alleges and shows that the action of the Commission with regard to the application of Barnett
40 Trucking Company referred to in paragraph 14 of the complaint is irrelevant and immaterial to the issues of this suit.

V

Answering paragraphs 15 and 16 of the complaint, the Commission denies each of and all the allegations therein contained.

VI

Answering paragraph 17 of the complaint, the Commission admits that operations beyond the scope of the Commission's final order will, upon and after the effective date of said order, be illegal and might result in the imposition of penalties as prescribed by law.

VII

Answering paragraph 18 of the complaint, and particularly the first subparagraph thereof, the Commission denies that its order will cause irreparable damage to the plaintiff or any legal damage whatever; and the Commission alleges and shows that under the report and order of the Commission the plaintiff may carry on motor carrier operations to the full extent of those carried on by Globe, plaintiff's predecessor, during the "grandfather" period.

VIII

Answering the second subparagraph of said paragraph 18 of the complaint, the Commission admits that Globe operated units of equipment as therein stated and that it had built up a large volume of business over various routes as described by the Commission in its report upon reconsideration, but the Commission denies that the plaintiff acquired, or could acquire, from Globe any operating rights beyond those set out and described in the Commission's report on reconsideration, of August 4, 1943, a true copy of which report is attached as Exhibit B to the complaint herein.

41

IX

Answering the third, fourth, fifth, and sixth subparagraphs of paragraph 18 of the complaint, the Commission alleges and shows that it has no knowledge as to the details of the certificates authorizing common carrier operations held by the plaintiff other than those relating to operating rights purchased from Globe, and the Commission alleges and shows that such operating rights as were

previously held by the plaintiff have no bearing upon the legal duty of the Commission with respect to its action upon the application of Globe, and the Commission denies that such separately acquired rights of the plaintiff are in any way involved in this suit or in the report and order of the Commission on reconsideration, Exhibit B to the complaint herein. The Commission further alleges and shows that in the Commission's order of May 16, 1944, approving the purchase by the plaintiff of the operating rights of Globe Cartage Company, Inc., in proceeding No. MC-F-1743, Hancock Truck Lines Inc.—Purchase—Globe Cartage Company, Inc. (reported 38 M. C. C. 382), the following paragraph appears:

"And it is further ordered; That nothing herein contained shall be construed as a determination of the operating rights of any person or persons under any section of the act, except section 5 thereof, as expressly determined herein."

Section 5 of the Act, referred to in said order, provides only for the transfer of operating rights; and the Commission further alleges and shows that said paragraph 18 of the complaint and particularly the fourth, fifth and sixth subparagraphs thereof are argumentative and irrelevant to the issues involved in this suit.

X

Further answering the complaint, the Commission alleges and shows that the plaintiff, as successor to the rights of Globe under its "grandfather" application, on or about November 1, 1943, filed

its petition for reconsideration of the Commission's report
42 and order on reconsideration of August 4, 1943, and in said

petition the plaintiff limited its objections to said report and order, to the Commission's prescription of the routes over which operating authority was granted therein, expressly waived objection to, and did not challenge or complain against the restriction of the transportation authorized to commodities consigned by freight forwarders and gave up all claim to the right to transport general commodities not so consigned.

XI

Except as herein expressly admitted, the Commission denies each of and all the allegations of the complaint, especially insofar as they conflict with the allegations of this answer or with the statements, findings, determinations or conclusions set out in the report of the Commission on reconsideration, Exhibit B to the complaint.

All of which matters and things the Commission is ready to aver, maintain and prove, as this Honorable Court shall direct.

Wherefore this defendant prays that the complaint herein be dismissed.

INTERSTATE COMMERCE COMMISSION,
By (S) NELSON THOMAS,
Nelson Thomas, Attorney.

(S) DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel,
Of Counsel.

43 [Duly sworn to by Wm. E. Lee; jurant omitted in printing.]

44 This is to certify that I have mailed a copy of the within answer on behalf of the Interstate Commerce Commission to Robert L. Pierce, Esq., Special Assistant to the Attorney General, Department of Justice, Washington, D. C., B. Howard Caughran, Esq., United States Attorney, Indianapolis 4, Ind., and Albert Ward, Esq., 318 Insurance Bldg., Indianapolis, Ind.

(S) NELSON THOMAS,
Nelson Thomas.

APRIL 4, 1944.

46 : In the District Court of the United States

Reply to Paragraph X of the answer of Interstate Commerce Commission

Filed April 8, 1944

Comes now the plaintiff and denies that part of Paragraph X of the Answer of the Interstate Commerce Commission which avers that the plaintiff gave up all claim to the right to transport general commodities not consigned by freight forwarders; plaintiff further denies that, it has waived its right to present to a court its claim that that part of the order which is complained of in the complaint herein is arbitrary, discriminatory, capricious, unlawful, unconstitutional and without right in the Commission to prescribe.

Wherefore, plaintiff demands judgment for injunctive relief, as prayed for in its complaint.

JACOB WEISS,
Jacob Weiss,
ALBERT WARD,
Albert Ward,
FERDINAND BORN,
Ferdinand Born,
Attorneys for Plaintiff;
Hancock Truck Lines, Inc.

48 In the District Court of the United States

Petition for leave to intervene

Filed April 8, 1944

Comes now the Regular Common Carrier Conference of the American Trucking Associations, Inc., your Petitioner, a non-profit corporation, duly organized and existing according to law, by and through its attorneys, B. W. La Tourette and G. M. Rebman, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding, and desires to intervene in and become a party to said proceeding, to file exceptions, briefs, replies and to participate fully in said proceeding; the same as if named therein, and to receive all required notices with respect thereto, and for grounds of the proposed intervention says:

1. That it is an association consisting of the regular route common carrier members of the American Trucking Associations, Inc., a non-profit corporation, constituting the national organization of the trucking industry; and that the purpose of this Conference is primarily to protect the interests of the regular route common carrier trucking industry and to further such interests through intelligent cooperation and organization.

2. That many members of the intervenor are common carriers engaged in the transportation of general commodities by motor vehicle in interstate commerce, in whole or in part in the territory in which complainant seeks authority to operate; that said carriers are so operating by virtue of compliance orders of certificates of convenience and necessity, issued by the Interstate Commerce Commission; that any operating authority which may be granted to the complainant herein in the territory sought will place said complainant in competition with and will prejudice the best interests of the members of intervenor.

3. Your petitioner further states that it does not by the filing of this petition, seek to broaden the issues involved in this proceeding.

Wherefore, your petitioner, the Regular Common Carrier Conference of the American Trucking Associations, Inc., prays leave to intervene and be treated as party hereto with the same rights as though named in complainant's petition.

B. W. LA TOURETTE,

G. M. REBMAN,

Attorneys for Petitioner.

818 Olive Street, St. Louis, Missouri.

VERIFICATION

STATE OF MISSOURI,

City of St. Louis, ss.

G. M. Rebman, being duly sworn, deposes and says: That he is one of the attorneys for intervenor Regular Common Carrier Conference of the American Trucking Associations, Inc.; that he has read the foregoing petition and knows the contents thereof; and that the same are true as stated, excepting as to those matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true.

G. M. REBMAN.
G. M. Rebman.

Sworn to and subscribed before me this 7th day of April, 1944.

[SEAL]

LUCILLE RYAN,
Notary Public.

My commission expires May 1, 1945.

50

(Entry for April 8, 1944, continued)

which said petition is granted and the Regular Common Carrier Conference of the American Trucking Associations, Inc. is given leave to intervene as a party herein.

This cause is now submitted to a regularly constituted Court comprised of three judges as required under Section 47 of Title 28 U. S. C. upon the plaintiff's application for a permanent injunction. The evidence being heard and concluded, the plaintiff is given to and including April 18, 1944, and the defendants are given to and including April 25, 1944 within which to file their respective briefs and submit drafts of special findings of fact.

Oral argument of counsel will be heard on Friday, April 28, 1944 at 10:00 A. M.

52

In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Proposed findings of fact and conclusions of law submitted by defendants United States and Interstate Commerce Commission

April 26, 1944

The above-styled cause came on for final hearing before this duly constituted three-judge court on April 28, 1944, and was submitted for final decree upon the pleadings, the evidence, the argu-

ments and briefs of counsel for the respective parties. The Court makes and enters its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. On or about February 4, 1936, Globe Cartage Company, Inc., an Indiana corporation (hereinafter called the Globe), the predecessor of the plaintiff herein, filed its application with the Interstate Commerce Commission (hereinafter called the Commission) under section 206 (a) of the Motor Carrier Act (306 (a) of Title 49, U. S. C. A.) for a "grandfather" certificate authorizing operations as a common carrier by motor vehicle in interstate or foreign commerce of general commodities, except commodities in bulk and those of unusual length, height or weight, between certain points in Illinois, Indiana, Kentucky, Michigan, Missouri, New York, Ohio, Pennsylvania, and West Virginia, over regular routes described in Appendix A to said application, serving all intermediate points. Upon said application the Commission instituted a proceeding designated No. MC-3339, Globe Cartage Company Inc. Common Carrier Application. Protests were filed by competing carriers by railroad and motor vehicle objecting to the issuance of the certificate prayed.

2. The proceeding was referred to a Commission examiner for the receiving and recording of evidence and the making of a proposed report. Evidence was received on behalf of the applicant and the protestants. A recommended report was prepared by the examiner and served upon all parties to the proceeding. Exceptions were filed and the evidence, the recommended report and the exceptions thereto were submitted to Division 5 of the Commission which, on October 7, 1942, made its report (41 M. C. C. 313) wherein it found, among other things, that the applicant, on June 1, 1935 and continuously thereafter, had been engaged in the transportation of freight between points designated therein solely for the Universal Carloading and Distributing Company, a freight forwarder as defined in section 402 (a) (5) of part IV of the Interstate Commerce Act, under written contracts.

3. The Division further ordered the issuance of a "grandfather" certificate to Globe as a common carrier authorizing the carriage of general commodities between the points designated in said report and overruled the contention of certain protestants that the authority granted should be limited to common carrier service for said Carloading Company. For a full and complete knowledge of the Division's findings, conclusions and orders, reference is made to the report of the Division, 41 M. C. C. 313.

4. Upon petition of protestants the entire Commission reopened and reconsidered the record in said proceeding,

and the action, report and order of Division 5 aforesaid, and on August 4, 1943, made and entered its report on reconsideration (42 M. G. C. 547) in which it found that although the applicant during the "grandfather" period transported only traffic assembled by the Universal Carloading and Distributing Company, the applicant performed a common carrier service and was a common carrier of traffic assembled by freight forwarders; and the entire Commission ordered the issuance of a certificate authorizing operations by the applicant between points therein designated, as a common carrier of general commodities (except commodities in bulk and those of unusual length, height or weight), which are at the time moving on bills of lading of freight forwarders. For a full and complete knowledge of the findings, conclusions and orders of the Commission on reconsideration, reference is made to said report (42 M. G. C. 547).

5. In the course of the proceedings above described, the Globe, the original applicant, sold its rights under the application to Hancock Truck Lines, Inc., plaintiff in this suit, and the Commission, by formal order in proceeding designated MC-F-1743, Hancock Truck Lines, Inc.—Purchase—Globe Cartage Company, Inc., 38 M. C. C. 383, approved of said sale of said rights, subject to final determination as to the extent thereof.

6. On November 1, 1943, plaintiff Hancock Truck Lines, Inc., as successor to the Globe, filed its petition for reconsideration by the entire Commission of its report and order of August 4, 1943, that in said petition the sole error alleged against the Commission was that it granted authority for operation only as to a portion of the routes and between some of the points and places specified in the application. In said petition the plaintiff further stated that it did not challenge nor complain against the restriction of the service authorized to the transportation of commodities which are moving on bills of lading of freight forwarders.

7. On January 10, 1944, the Commission by order denied plaintiff's petition for reconsideration and has from time to time subsequent thereto extended the effective date of its order of August 4, 1943, until May 31, 1944.

8. The plaintiff in this suit does not complain of the Commission's failing to authorize service over all routes or to all points and places specified in the original application of the Globe, nor does it question the correctness of the statements of fact found in the report of Division 5 of the Commission of October 7, 1943, nor in the report of the Commission on further hearing of August 4, 1943; the evidence heard by the Commission has not been put in evidence in this case and hence the findings of fact in the Commission's

reports must, for the purposes of this suit, be taken as supported by substantial evidence.

9. The statements of fact and the findings and conclusions of the Commission, as set out in said report on reconsideration are sufficient to support the Commission's order.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this suit to set aside an order of the Interstate Commerce Commission and of the parties thereto.

2. The proceedings before the Commission which resulted in said report and order of the Commission upon reconsideration were within the lawful jurisdiction of the Commission, were made after due notice to all interested parties, a fair hearing, and upon substantial evidence.

3. The limitation of the commodities which the plaintiff is authorized to carry, to those which are moving on bills of lading of freight forwarders, was and is warranted by the law and the facts shown by the Commission's record.

4. The report and order of the Commission and the enforcement thereof will not deprive the plaintiff of any constitutional or legal right.

5. The plaintiff is not entitled to the relief it prays, and this suit should be dismissed for want of equity.

United States Circuit Judge.

United States District Judge.

United States District Judge.

57 And afterwards to wit at the November Term of said Court on the 28th day of April 1944, before the Honorables Sherman Minton, Circuit Judge and Robert C. Baltzell and Luther M. Swygert, District Judges, the following further proceedings were had herein, to wit:

Come now the Indianapolis & Southern Motor Express, Inc. and Adkins Transfer Company, Inc. by their attorney, Claude H. Anderson, and file appearance, which appearance is as follows:

58 United States District Court

The undersigned, having been duly admitted to practice in the said Court, hereby enter

Appearance

Indianapolis & Southern Motor Express, Inc., Adkins Transfer Co., Inc., in the above-entitled cause.

(S) CLAUDE H. ANDERSON,
Attorney.

Address: 601 Illinois Bldg., Indianapolis.

59 (Further entry for April 28, 1944)

Come now the parties by their respective attorneys and oral argument of counsel is heard and the Court now takes this cause under advisement.

60 And afterwards to wit at the May Term of said Court on the 25th day of May 1944, before the Honorable Sherman Minton, Circuit Judge, and Robert C. Baltzell and Luther M. Swygert, District Judges, the following further proceedings were had herein, to wit:

This cause coming on now to be finally heard by the Court, and the parties appearing by their respective attorneys, and the Court having heard the evidence and the argument of counsel and being sufficiently advised in the premises, now, pursuant to Rule 52 of the Rules of Civil Procedure, signs and files herein its special findings of fact and states its conclusions of law thereon, which said special findings of fact and conclusions of law are ordered by the Court filed and made a part of the record in this cause, all of which is now done.

61 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Findings of fact and conclusions of law

Filed May 25, 1944

The three-judge Court herein having heretofore heard the evidence, the argument of counsel, and being duly advised in the premises, now finds the facts specially herein, and states separately its conclusions of law thereon.

The facts are found to be as follows:

62 Finding No. 1

The plaintiff is a corporation duly organized and existing under the laws of the State of Indiana, and has been such since 1933.

with its principal office and place of business in the City of Evansville, Vanderburgh County, Indiana, and with an office in the City of Indianapolis, in Marion County, Indiana, and is a citizen and resident of the District-Court, for the Southern District of Indiana.

Finding No. 2

Plaintiff seeks to enjoin, set aside, annul and restrain the enforcement of part of a certain order of the Interstate Commerce Commission, being Order No. MC-3339, entitled Globe Cartage Company, Inc., Common Carrier Application, which was approved on the 4th day of August, 1943 and later modified to become effective on the 31st day of March, 1944, and which proceeding is now designated by the Commission as No. MC-25567 (Sub. No. 8), Hancock Truck Lines, Inc., successor to Globe Cartage Company, Inc.; its action arises under the Fifth Amendment to the Constitution of the United States; and under Section 205 (h) of the Motor Carrier Act of 1935, now Section 205 (g) of Part II of the Interstate Commerce Act, (U. S. Code, Sup. 1, Title 49, Sec. 305 (h), and under the Acts of Congress, Code of Laws of the United States, Title 28, Sections 41 (28), 32 to 48, inclusive.

Finding No. 3

Throughout the period of plaintiff's corporate existence, it has been, and is now, a common carrier by motor vehicles, holding itself out to the general public to engage in the transportation by motor vehicles in interstate and foreign commerce of general commodities, with certain usual exceptions, for compensation, and has been, and is now, the holder of certain certificates of public convenience and necessity issued to it by the defendant, Interstate Commerce Commission, different from the certificate and order of the Commission complained of in the complaint.

Finding No. 4

On or about the 29th day of January, 1936, an Indiana corporation known as Globe Cartage Company, Inc., having its general office and principal place of business in Indianapolis, Marion County, Indiana, filed its written application with the defendant, Interstate Commerce Commission, under the grandfather clause or Section 306, Title 49 U. S. C. A., duly alleging that it was in fact, in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the routes and within the territory for which such application was made by it, and had so operated since that time down to the filing of its said application, such ap-

plication and proceeding being entitled "Globe Cartage Company, Inc., Common Carrier Application," and bearing No. MC-3339, and wherein it requested said Commission to give and grant unto it a certificate of convenience and necessity, under and pursuant to said grandfather clause, such application for such certificate having been made by said corporation to the Commission in all respects as provided for in Paragraph (b) of Section 206, of Part II of the Interstate Commerce Act aforesaid, and within 120 days after October 1, 1935; proceedings were had in relation to such application which resulted in a reference of said application to an examiner by said Commission; thereafter, evidence 64 was heard by said Examiner, report was made to the Commission, and under date of October 7, 1942, Division 5 of the defendant, Interstate Commerce Commission, decided that said applicant was entitled to continue operations as a common carrier by motor vehicle of general commodities between certain points in Illinois, Indiana, Kentucky, Michigan, Missouri, New York, Ohio and Pennsylvania, over regular routes by reason of having been so engaged on June 1, 1935, and continuously since, a copy of the findings of fact, and the decision of said Division 5, dated October 7, 1942, aforesaid, being filed with the complaint, marked "Exhibit A", and made a part thereof, which Exhibit is adopted as a part of these findings.

Finding No. 5

Said Division No. 5 of the Interstate Commerce Commission made and adopted its special findings of fact, wherein, among other things, it was found by said Division 5 that on June 1, 1935, said Globe Cartage Company, Inc., was, and continuously since had been, in bona fide operation as a common carrier by motor vehicle, in interstate and foreign commerce, over certain of the routes described in said application, particularly described in paragraph 6 of plaintiff's complaint.

Finding No. 6

Said Division No. 5 further found in said findings of fact that it could not, consistently with said applicant's common carrier status, restrict its services to particular shippers, namely, freight forwarders, and that to restrict the traffic which it might transport to shipments made by freight forwarders would, in effect and result, be a restriction of applicant's services to such forwarders.

65

Finding No. 7

Said Division 5 thereupon found and concluded that upon compliance by applicant with the requirements of Sections 215 and 217

of said Act, and of the Rules and Regulation of said Commission thereunder, that an appropriate certificate in conformity with such findings would be issued to it, all as is more particularly set out in said Exhibit A aforesaid, in Appendix B thereof.

Finding No. 8

Thereafter, further proceedings were had in relation to said application, and the defendant, Interstate Commerce Commission, upon petitions filed by protestants for reconsideration of such findings and conclusions, vacated and set aside the order entered by Division 5, and upon such reconsideration the Commission entered its report and order showing the same to have been decided as of August 4, 1943, and a copy of the Commission's findings, conclusions and order of August 4, 1943, is attached to the complaint, marked "Exhibit B", and made a part thereof, which Exhibit is adopted as a part of these findings.

Finding No. 9

The Commission in all respects confirmed the findings of fact of said Division No. 5 to the effect that said applicant, Globe Cartage Company, Inc., had been engaged in bona fide operations, without interruption, since prior to June 1, 1935, transporting by motor vehicle for compensation, in interstate or foreign commerce, general commodities (i. e., freight and commodities of every class, type and character), except commodities in bulk and those of unusual length, height or weight; it further found
66 as a fact that said applicant was a common carrier by motor vehicle, and further confirmed and ratified the finding of Division 5 that the Commission could not, consistently with applicant's common carrier status, restrict its services to particular shippers; said Commission further found as a fact that said applicant, Globe Cartage Company, Inc., was a common carrier and entitled to authority to continue operations as such, and that said Commission was without power to restrict or limit its operations in a manner which would change its status from that of a common carrier.

Finding No. 10

That contrary to the findings above set forth, the Commission did place certain restrictions in said order of August 4, 1943, limiting the transportation to be performed in the future by the plaintiff to those general commodities which are at the time moving on bills of lading of freight forwarders, and specific reference is

made to Sheet 5 of Exhibit B, from which the following is set forth:

"On reconsideration, we find that applicants are entitled to certificates authorizing operations by them as common carriers of general commodities (except commodities in bulk and those of unusual length, height or weight) which are at the time moving on bills of lading of freight forwarders, between the points and in the manner described in the findings in the prior reports."

Finding No. 11

A petition to modify the effective date of said order was filed, and on February 21, 1944, the Commission made the effective date thereof March 31, 1944, and then by order dated the 13th day of March, 1944, denied the petition to modify the effective date of said order beyond March 31, 1944, and said order was a final order when this action was commenced.

67

Finding No. 12

While said proceedings of Globe Cartage Company, Inc., were pending before said Commission in said Cause No. MC-3339, plaintiff acquired all of the common carrier operating rights of the said Globe Cartage Company, Inc., and that such transaction was with the Commission's approval by formal report and order, dated as of May 16, 1942, in proceeding (docket) numbered MC-F 1743, and such operating rights were duly and legally acquired by, and transferred to this plaintiff, Hancock Truck Lines, Inc., and it is now the successor in interest of all the rights of said Globe Cartage Company, Inc., and ever since the consummation of the transaction shortly after the last named date, plaintiff has been, and is now, the sole owner of all of said rights of Globe Cartage Company, Inc., and of all rights, privileges and grants to which Globe Cartage Company, Inc., would have been entitled to, under and pursuant to the proceedings in its said application for said certificate in Cause No. MC-3339 aforesaid, and plaintiff is therefore now interested in said proceeding, and in said final order, and will be the sole owner of such certificate as is issued thereunder.

Exhibit F in evidence is a correct copy of the findings of fact, report and order of the Commission of May 16, 1942, aforesaid, and such Exhibit is adopted as a part of these findings.

Finding No. 13

The defendants, and each thereof, is threatening to enforce that part of the order thus complained of in the complaint, and unless they are enjoined by this Court they will enforce said order;

plaintiff has exhausted all of its remedies before the defendant, Interstate Commerce Commission.

68

Finding No. 14

The plaintiff, as such common carrier of property by motor vehicles, has, and does provide safe and adequate service, equipment, and facilities for the transportation of property consisting of general commodities in interstate and foreign commerce, and established, observed and enforced just and reasonable rates, charges and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate and foreign commerce, and has fully complied with all the rules and regulations of the Commission in relation thereto insofar as they are in effect at this time; and as such common carrier it is prohibited by law from making, giving or causing any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, district territory, or description of traffic, in any respect whatsoever, and as a common carrier it is bound by law to receive and transport such general commodities as are offered to it for transportation by either the owners or their agents for transportation, and to carry them on the routes which it operates.

69

Finding No. 15

The order of the Commission dated May 16, 1942, referred to in Finding No. 12, was made in said proceeding so numbered M. C. F. 1743, pursuant to a joint application filed before the Commission by Hancock Truck Lines, Incorporated, and Globe Cartage Company, for purchase by the former of the operating rights of the latter; a hearing was had by Division 4 and a finding made by the Commission authorizing such purchase; when the application was filed, Hancock had only paid Globe \$100, but had agreed to pay an additional \$2,500 upon approval of such transaction by the Commission, \$2,500 upon final approval by the last concerned State regulatory authorities, and \$4,900 within 10 days thereafter. The Commission found that approximately 65% of Globe's traffic consisted of business handled for Universal Carloading and Distributing Company, a freight forwarding company, and as a result of handling such business the flow of traffic for Globe was unbalanced, necessitating the dead-

heading of equipment, especially from St. Louis east; it found, on the other hand, that Hancock enjoyed heavier traffic east out of St. Louis than in the reverse direction; the Commission found that, with some exceptions not material herein, Hancock's regular route operations were over routes duplicated by those claimed by Globe, the latter's operations, however, being considerably more extensive; both carriers were found to be serving Louisville, Evansville, Indianapolis, Vincennes, Terre Haute, Detroit, St. Louis, and Chicago, among other points, and maintained duplicate terminal facilities at a number of such common points; Globe did not believe that it would be justified in expending additional funds to develop a better balanced operation and, as its functions and facilities substantially duplicated those of Hancock, the desired result could be accomplished through the unification of the operations of Hancock; The Commission found that such unification would result in better balanced lading between the common points served, principally between Louisville and Chicago, Chicago and St. Louis, and St. Louis and Indianapolis, would provide Hancock with shorter routes; Hancock was found to have the necessary organization to conduct the additional operations and would meet any increased equipment demands either by leasing or purchasing the same; the Commission found that savings through consolidation of overlapping functions, including terminal and pick-up and delivery facilities, application of Hancock's lower insurance rates, reduction in truck miles operated empty, and through increasing the use factor of vehicles operated by transporting heavier loads, were estimated to be in excess of \$50,000 annually, approximately \$20,000 of which represented the estimated cost to Globe, if it remained in operation in developing additional business to balance its present lading; the Commission found that the proposed unification was in line with its purpose of encouraging corporate simplification in the interest of economical and efficient transportation.

The Commission further found that the purchase of Hancock of the common carrier operating rights of Globe, upon the terms and conditions set out in the order, which terms and conditions were found by the Commission to be just and reasonable, was a transaction within the scope of Section 5 (2) (a) and would be consistent with the public interest and pending determination of Globe's "grandfather" applications in Nos. MC-3339 and MC-3340, Hancock should conduct the common carrier operations lawfully conducted under the "grandfather" clause pursuant to those applications, and Hancock would be entitled to a certificate covering any "grandfather" common carrier rights which might be

confirmed as a result of those applications, which rights the Commission by its said order of May 16, 1942, authorized to be unified with rights otherwise confirmed in Hancock, with duplications eliminated; an order was thereupon entered by the Commission conforming to such findings, and such order is in plaintiff's Exhibit F.

71

Finding No. 16

Following the findings and order of the Commission set out in Finding No. 15, Hancock Truck Lines, Incorporated, in reliance upon such findings and order, paid to Globe said \$9,900, the balance of the purchase price for such common carrier operating rights.

Finding No. 17

In further reliance upon said findings and order of May 16, 1942, the plaintiff completely unified the common carrier operating rights of Globe which were to be confirmed by the Commission as a result of its grandfather applications aforesaid, with rights otherwise confirmed in Hancock, with duplications eliminated, which rights at that time were the common carrier rights of Hancock pursuant to its certificates of public convenience and necessity theretofore granted to it by the Commission over the routes aforesaid; plaintiff thereafter continued to operate under said order of unification, and unified the common carrier rights of both of said companies are authorized by the Commission, and has continued such unified operation up to this time, to the extent and in the manner as set out in paragraph 18 of its complaint.

Finding No. 18

If that part of the order complained of by the plaintiff is enforced, all of the business which plaintiff has built up under said unification order of May 16, 1942, will be destroyed, and plaintiff will be put back to the position which Globe was in when said order was entered, namely, maintaining duplications in terminals and facilities, handling an unbalanced loading, dead-heading of equipment, its savings in excess of \$50,000 per year through consolidation of overlapping functions, including terminal and pick-up delivery facilities, reduction in truck miles operated, and the use of vehicles operated by transporting heavier loads, will all be lost to it, and it will suffer and sustain immediate and irreparable injury, loss and damage on account of the enforcement of the part of said order complained of herein.

72

Finding No. 19.

The Commission has made no finding of fact that the restriction complained of in the complaint is a reasonable term, condition or limitation required by the public convenience and necessity; nor has it found as a fact that it will be consistent with the public interest to place such restriction in said order; nor has it found that good cause exists for changing said order of May 16, 1942.

That part of the order complained of herein is not sustained or justified by any fact found by the Commission, and there is no rational basis for its support; said part of said order is now found to be discriminatory against the plaintiff, is an arbitrary, unreasonable and capricious restriction upon the rights, duties and privileges of plaintiff as a common carrier of general commodities by motor vehicle for compensation, will deprive plaintiff of its rights and property without due process of law, and is illegal and void.

DATED at Indianapolis, Indiana, this 25th day of May 1944.

(S) SHERMAN MINTON,
Circuit Judge.

(S) ROBERT C. BALTZELL,
District Judge.

(S) LUTHER M. SWYGERT,
District Judge.

CONCLUSIONS OF LAW.

Upon the foregoing facts, the Court concludes the law to be as follows:

One. The Court has jurisdiction of the subject matter, and of the parties, in this cause of action.

Two. That part of the order complained of in the complaint which limits plaintiff's operations as a common carrier of general commodities to those "which are at the time moving on bills of lading of freight forwarders" is illegal and void, and the defendants should be permanently enjoined from enforcing the same.

Dated at Indianapolis, Indiana, this 25 day of May, 1944.

SHERMAN MINTON,
Circuit Judge.

ROBERT C. BALTZELL,
District Judge.

LUTHER M. SWYGERT,
District Judge.

Decree

May 25, 1944

Upon the foregoing Special Findings of Fact and Conclusions of Law, it is ordered, adjudged, and decreed:

1. That part of the order made and entered by the defendant, Interstate Commerce Commission, as of August 4, 1943, in Cause No. MC-3339, Globe Cartage Company, Inc., Common Carrier Application, complained of in the complaint, which confines authorized operations by Hancock Truck Lines, Inc., successor in interest of Globe Cartage Company, Inc., as a common carrier of general commodities, to general commodities "which are at the time moving on bills of lading of freight forwarders," is illegal and void, and the defendants, United States and The Interstate Commerce Commission, and their officers, agents, servants, employees, and attorneys, and all those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, should be, and they are hereby permanently enjoined and prohibited from enforcing or attempting to enforce the same in any manner.

76 In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Civil Action No. 795

HANCOCK TRUCK LINES, INC., *Plaintiff*,

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants

Petition for Appeal

Filed July 22, 1944

The United States and the Interstate Commerce Commission, defendants in the above-entitled cause, feeling themselves aggrieved by the final decree of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, entered in said court on May 25, 1944, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein they consider the decree erroneous are set forth in the Assignment of Errors accompanying this petition and to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and entered, duly

authenticated, be transmitted forthwith to the Supreme Court of the United States.

CHARLES FAHY,
Charles Fahy,
Solicitor General.

WENDELL BERGE,
Wendell Berge,
Assistant Attorney General.

ROBERT L. PIERCE,
Robert L. Pierce,
EDWARD DUMBAULD,
Edward Dumbauld,

Special Assistants to the Attorney General.

DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel,

NELSON THOMAS,
Nelson Thomas,

*Attorney,
Interstate Commerce Commission.*

79 In the District Court of the United States for the Southern District of Indiana, Indianapolis Division:

Civil Action-No. 795

HANCOCK TRUCK LINES, INC., PLAINTIFF

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Assignment of errors

Filed July 22, 1944

Come now, the United States and the Interstate Commerce Commission, defendants in the above-entitled cause, and file the following assignment of errors upon which they will rely in the prosecution of their appeal from the final decree of the District Court entered May 25, 1944. The District Court erred:

1. In not dismissing plaintiff's complaint.
2. In setting aside and denying the Commission's order of August 4, 1943.
3. In making and entering findings of fact and conclusions of law in the form and substance adopted by the Court.
4. In refusing to adopt the findings of fact and conclusions of law submitted by the defendants.

5: In making and entering its order of injunction dated May 26, 1944, holding that that part of the Commission's order which confines authorized operations by Hancock Truck Lines, Inc., as successor in interest of Globe Cartage Company, Inc., to commodities "which are at the time moving on bills of lading
80 of freight forwarders" is illegal and void, and enjoining enforcement of the same.

6. In holding, as indicated in the Court's finding of fact No. 19, that the report and order of the Commission as issued August 4, 1943, are not supported by the facts found in said report; that said order is discriminatory against the plaintiff; or that it in any way unlawfully restricts plaintiff in the performance of its public duties.

7. In failing to find that the evidence supports the Commission's findings that during the "grandfather" period the Globe Cartage Company, Inc., served only a freight forwarder and carried only goods which were moving on bills of lading issued by a forwarder.

8. In giving consideration as the basis of its decree of May 25, 1944, to the history and characteristics of the plaintiff, Hancock Truck Lines, Inc., and its operations, and to the statements and conclusions of Division 5 in its report of May 16, 1942, in MC-F-1743, approving the purchase of the Globe by the Hancock, as indicated in the Court's findings of fact as a whole, and particularly in findings Nos. 3, 14, 15, 16, 17, and 18.

9. In holding, as indicated by the Court's finding of fact No. 19, that the Commission's order imposed a limitation which could not be sustained in the absence of a finding by the Commission under Section 208 of the Interstate Commerce Act that such limitation was a reasonable limitation required by the public convenience and necessity.

10. In failing to hold that the Commission's order as issued was authorized under that portion of Section 208 of the Interstate Commerce Act which requires the Commission to "specify the service to be rendered" in a certificate issued under Section 206 of that Act.

11. In holding, contrary to the Commission's decision, that the restriction imposed by the Commission was inconsistent
81 with Globe's common carrier status.

12. In failing to hold that the Commission was authorized to issue a certificate to a common carrier limited, in accordance with Section 203 (14), to the transportation of a particular class of property, viz. property moving on bills of lading of freight forwarders, that being the only class of commodities which the Commission found was being transported by applicant during the "grandfather" period.

13. In weighing the evidence heard by the Commission and making statements of fact in its findings of fact based thereon,

instead of limiting its consideration to the question of whether the Commission record contains substantial evidence to sustain the Commission's report and order.

14. In attempting to permit the plaintiff to exercise operating authority other than that issued by the Commission,—authority which would authorize the plaintiff, as successor to the Globe, to perform operations different from those the Commission has found that the Globe was performing on and subsequent to June 1, 1935, the "grandfather" date.

15. In setting aside only the commodity restriction while leaving the rest of the order in effect, and thereby undertaking to exercise the administrative function entrusted to the Commission of determining in the first instance the scope of the operating authority to be issued; instead of setting aside the order as a whole and remanding the case to the Commission for further proceedings, which would have been the proper procedure in case the commodity restriction contained in the order were held to be invalid.

16. In failing either in an opinion or in its findings of fact or conclusions of law to state reasons for its decision or for its final decree.

82 17. In making the Court's finding of fact No. 2, which states, among other things, that plaintiff's action arose under the Fifth Amendment to the Constitution of the United States.

Wherefore, Defendants pray that said decree be reversed.

CHARLES FAHY,

Charles Fahy,

Solicitor General.

WENDELL BERGE,

Wendell Berge,

Assistant Attorney General.

ROBERT L. PIERCE,

Robert L. Pierce,

EDWARD DUMBAULD,

Edward Dumbauld,

Special Assistants to the Attorney General.

DANIEL W. KNOWLTON,

Daniel W. Knowlton,

Chief Counsel,

Interstate Commerce Commission.

NELSON THOMAS,

Nelson Thomas,

Attorney,

Interstate Commerce Commission.

In United States District Court

Order allowing appeal

July 22, 1944

In the above-entitled cause, United States and the Interstate Commerce Commission, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this court in this cause entered on May 25, 1944, and having also made and filed an Assignment of Errors and a Statement of Jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided, it is

Ordered and decreed, That the appeal be, and the same is hereby, allowed as prayed for.

Said defendants also file citation on appeal, which is as follows:

106 [Citation in usual form, filed July 22, 1944, omitted in printing.]

112 In the District Court of the United States

[Title omitted.]

Notice of appeal

Filed July 22, 1944

To the Attorney General for the State of Indiana:

You are hereby notified that the District Court of the United States for the Southern District of Indiana, Indianapolis Division, on July 22, 1944, filed and entered an order allowing an appeal by the United States and the Interstate Commerce Commission to the Supreme Court of the United States from a decree filed and entered on May 25, 1944, in the above-entitled cause, and that the citation signed by such Court on July 22, 1944, in connection with the order allowing such appeal, is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, defendants' jurisdictional statement pursuant to Rule 12 of the revised Rules of the Supreme Court of the United States, and the statement required to be served upon appellees by said Rule 12.

113 This notice is given to you pursuant to the provisions of
U-S. Code, Title 28, Sec. 47a, enacted March 3, 1911, c. 231,
Sec. 210.

Dated, 21st July 1944.

CHARLES FAHY,
Charles Fahy,
Solicitor General.

WENDELL BERGE,
Wendell Berge,
Assistant Attorney General.

ROBERT L. PIERCE,
Robert L. Pierce,
EDWARD DUMBAULD,
Edward Dumbauld,
*Special Assistants to the
Attorney General.*

DANIEL W. KNOWLTON,
Daniel W. Knowlton,
Chief Counsel.

NELSON THOMAS,
Nelson Thomas,
*Attorney,
Interstate Commerce Commission.*

Received a copy of the foregoing notice this 22nd day of July
1944.

JAMES A. EMMERT,
FRANK HAMILTON,
*1st Deputy for the Attorney General,
of the State of Indiana.*

119 In the District Court of the United States

[Title omitted.]

Præcipe for Transcript of Record.

Filed July 22, 1944

To the CLERK OF THE ABOVE-NAMED COURT:

You will please prepare a transcript of the record in the above-
entitled cause to be transmitted to the Clerk of the Supreme Court

of the United States pursuant to the appeal heretofore taken, and include in said transcript the following:

1. Plaintiff's complaint, with Exhibits A, B, C, and D, thereto.
2. Answer of defendant United States.
3. Answer of defendant Interstate Commerce Commission.
4. Plaintiff's reply to paragraph X of answer of defendant Interstate Commerce Commission.
5. Order convening a three-judge court.
6. Petition of Regular Common Carrier Conference of the American Trucking Associations, Inc., for leave to intervene and become a party defendant in the above-styled proceeding.
7. Order of April 8, 1944, allowing the above-mentioned intervention, the recording of the filing of plaintiff's reply to paragraph X of the answer of the Interstate Commerce Commission, and the hearing and submission of the case.
8. Proposed findings of fact and conclusions of law submitted by defendants United States and Interstate Commerce Commission (but refused and not given by the court).
9. Findings of fact and conclusions of law submitted by plaintiff and given by the court.
10. Final decree of May 25, 1944.
11. All minute entries and orders entered by the court in said proceeding which have not been hereinabove specifically called for.
12. All exhibits offered at the hearing by plaintiff and admitted in evidence by the court.
13. All exhibits offered by defendants and admitted in evidence by the court.
14. Petition of defendants United States and Interstate Commerce Commission for appeal and any other petition for appeal which may be filed herein.
15. Assignment of errors filed by defendants United States and Interstate Commerce Commission and any other assignment of errors which may be filed herein.
16. Statement as to jurisdiction submitted by defendants United States and Interstate Commerce Commission and any other jurisdictional statement which may be submitted herein.
17. Order allowing appeal.
18. Notice (pursuant to Rule 12 of the Supreme Court) and proof of service thereof.
19. Citation on appeal and proof of service thereof.
20. Notice to the Attorney General of the State of Indiana and proof of service thereof.

- 121 21. This praecipe and any other supplemental praecipe or counter-praecipe which may be filed herein.
22. The Clerk's certificate.

CHARLES FAHY,
Charles Fahy,
Solicitor General.

WENDELL BERGE,
Wendell Berge,
Assistant Attorney General.

ROBERT L. PIERCE,
Robert L. Pierce,

EDWARD DUMBAULD,
Edward Dumbauld,

Special Assistants to the Attorney General.

DANIEL W. KNOWLTON,
Daniel W. Knowlton,

Chief Counsel.

NELSON THOMAS,
Nelson Thomas,

Attorney,

Interstate Commerce Commission.

- 122 Receipt of copy of the foregoing Praecipe for Transcript of Record acknowledged this July 22, 1944.

JACOB WEISS,
ALBERT WARD,
FERDINAND BORN,

Attorneys for Hancock Truck Lines, Inc.

- 127 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Petition for appeal

Filed July 22, 1944

The Regular Common Carriers Conference of the American Trucking Association, Inc., a corporation, the intervening defendant in the above-entitled cause, feeling itself aggrieved by the final decree of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, entered in said court on May 25, 1944, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein it considers the decree erroneous are set forth in the Assignment of Errors accompanying this petition and to which reference is hereby made.

Said defendant prays that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

B. W. LA TOURETTE,

B. W. La Tourette,

G. M. REBMAN,

G. M. Rebman,

818 Olive Street, St. Louis (1), Mo.

Attorneys for Intervening Defendant.

HOWELL ELLIS,

Howell Ellis,

520 Illinois Building, Indianapolis, Indiana,

Local Counsel for Intervening Defendant.

129

In the District Court of the United States

Assignment of errors

Filed July 22, 1944

Come now the Regular Common Carrier Conference of the American Trucking Associations, Inc., defendant, intervenor in the above-entitled cause, and files the following assignment of errors upon which they will rely in the prosecution of their appeal from the final decree of the District Court entered May 25, 1944. The District Court erred:

1. In not dismissing plaintiff's complaint.
2. In setting aside and enjoining the Commission's order of August 4, 1943.
3. In making and entering findings of fact and conclusion of law in the form and substance adopted by the Court.
4. In refusing to adopt the findings of fact and conclusions of law submitted by the defendants.
5. In making and entering its order of injunction dated May 26, 1944, holding that that part of the Commission's order which confines authorized operations by Hancock Truck Lines, Inc., as successor in interest of Globe Cartage Company, Inc., to commodities "which are at the time moving on bills of lading of freight forwarders" is illegal and void, and enjoining enforcement of the same.

130

6. In holding, as indicated in the Court's finding of fact No. 19, that the report and order of the Commission as issued August 4, 1943 are not supported by the facts found in said report; that said order is discriminatory against the plaintiff; or

that it in any way unlawfully restricts plaintiff in the performance of its public duties.

7. In failing to find that the evidence supports the Commission's findings that during the "grandfather" period the Globe Cartage Company, Inc., served only a freight forwarder and carried only goods which were moving on bills of lading issued by a forwarder.

8. In giving consideration as the basis of its decree of May 25, 1944, to the history and characteristics of the plaintiff, Hancock Truck Lines, Inc., and its operations, and to the statements and conclusions of Division 5 in its report of May 16, 1942, in MC-F-1743, approving the purchase of the Globe by the Hancock, as indicated in the Court's findings of fact as a whole, and particularly in findings Nos. 3, 14, 15, 16, 17, and 18.

9. In holding, as indicated by the Court's finding of fact No. 19, that the Commission's order imposed a limitation which could not be sustained in the absence of a finding by the Commission under Section 208 of the Interstate Commerce Act that such limitation was a reasonable limitation required by the public convenience and necessity.

10. In failing to hold that the Commission's order as issued was authorized under that portion of Section 208 of the Interstate Commerce Act which requires the Commission to "specify the service to be rendered" in a certificate issued under Section 206 of that Act.

11. In holding, contrary to the Commission's decision, that the restriction imposed by the Commission was inconsistent with Globe's common carrier status.

12. In failing to hold that the Commission was authorized to issue a certificate to a common carrier limited, in accordance with Section 203 (14), to the transportation of a particular class of property, viz, property moving on bills of lading of freight forwarders, that being the only class of commodities which the Commission found was being transported by applicant during the "grandfather" period.

13. In weighing the evidence heard by the Commission and making statements of fact in its findings of fact based thereon, instead of limiting its consideration to the question of whether the Commission record contains substantial evidence to sustain the Commission's report and order.

14. In attempting to permit the plaintiff to exercise operating authority other than that issued by the Commission—authority which would authorize the plaintiff, as successor to the Globe, to perform operations different from those the Commission has found that the Globe was performing on and subsequent to June 1, 1935, the "grandfather" date.

15. In setting aside only the commodity restriction while leaving the rest of the order in effect, and thereby undertaking to exercise the administrative function entrusted to the Commission of determining in the first instance the scope of the operating authority to be issued; instead of setting aside the order as a whole and remanding the case to the Commission for further proceedings, which would have been the proper procedure in case the commodity restriction contained in the order were held to be invalid.

16. In failing either in an opinion or in its findings of fact or conclusions of law to state reasons for its decision or for its final decree.

132 17. In making the Court's finding of fact No. 2, which states, among other things, that plaintiff's action arose under the Fifth Amendment to the Constitution of the United States.

Wherefore, Defendants pray that said decree be reversed.

B. W. LATOURETTE,

G. M. REBMAN,

818 Olive Street, St. Louis (1), Mo.

Attorneys for Intervening Defendant.

HOWELL ELLIS,

520 Illinois Building, Indianapolis, Indiana,

Local Counsel for Intervening Defendant.

158

In United States District Court

Order allowing appeal

July 22, 1944

In the above-entitled cause, Regular Common Carrier Conference Associations, Inc., a corporation, having made and files a petition praying an appeal to the Supreme Court of the United States from the final decree of this court in this cause entered on May 25, 1944, and having also made and filed an Assignment of Errors and a Statement of Jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided, it is

Ordered and decreed, That the appeal be, and the same is hereby, allowed as prayed for.

159 [Citation in usual form, filed July 22, 1944, omitted in printing.]

164

In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Notice of appeal

Filed July 25, 1944

To the ATTORNEY GENERAL FOR THE STATE OF INDIANA:

You are hereby notified that the District Court of the United States for the Southern District of Indiana, Indianapolis Division, on July 22nd, 1944, filed and entered an order allowing an appeal by the Intervening Defendant, Regular Common Carriers Conference Associations, Inc., a corporation, to the Supreme Court of the United States from a decree filed and entered on May 25, 1944, in the above-entitled cause, and that the citation signed by such Court on July 22, 1944, in connection with the order allowing such appeal, is made returnable on August 29, 1944.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, defendant's jurisdictional statement pursuant to Rule 12 of the revised Rules of the Supreme Court of the United States, and the statement required to be served upon appellees by said Rule 12.

165 This notice is given to you pursuant to the provisions of U.S. Code, Title 28, Sec. 47a, enacted March 3, 1911, C. 231, Sec. 210.

Dated July 25, 1944.

(S) B. W. LA TOURETTE,

B. W. La Tourette,

(S) G. M. REHMAN,

G. M. Rehman,

818 Olive Street, St. Louis (1), Mo.,

Attorneys for Intervening Defendant.

(S) HOWELL ELLIS,

Howell Ellis,

520 Illinois Building, Indianapolis, Ind.,

Local Counsel for Intervening Defendant.

Received a copy of the foregoing notice this 25th day of July 1944.

ROBERT HOLLOWELL, JR.,

Deputy Attorney General for the Attorney,

General of the State of Indiana.

210 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Stipulation that original exhibits be transmitted as part of transcript of record on appeal

Filed Aug. 14, 1944

The parties to the above-styled cause hereby stipulate that the originals of all exhibits introduced or offered in evidence at the hearing of the above-entitled cause before the statutory court may be transmitted as a part of the transcript of record on appeal in this case to the Supreme Court of the United States in lieu of the transmission of copies or transcripts thereof.

This 2d day of August 1944.

EDWARD DUMBAULD,

NELSON THOMAS,

Attorneys for plaintiff-appellees.

JACOB WEISS,

ALBERT WARD,

FERDINAND BORN,

Attorneys for Plaintiff-appellees.

212 [Cost bond on appeal for \$250.00 approved and filed Aug. 17, 1944, omitted in printing.]

215 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Præcipe for transcript of record

Filed Aug. 17, 1944.

To the Clerk of the Above-named Court:

You will please prepare a transcript of the record of the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States pursuant to the appeal heretofore taken, and include in said transcript the following:

1. Plaintiff's complaint, with Exhibits A, B, C, and D thereto.
2. Answer of defendant United States.
3. Answer of defendant Interstate Commerce Commission.

4. Plaintiff's reply to paragraph X of answer of defendant Interstate Commerce Commission.

5. Order convening a three-judge court.

6. Petition of Regular Common Carrier Conference of the American Trucking Associations, Inc., for leave to intervene and become a party in the above-styled proceeding.

216 7. Order of April 8, 1944, allowing the above-mentioned intervention, the recording of the filing of plaintiff's reply to paragraph X of the answer of the Interstate Commerce Commission, and the hearing and submission of the case.

8. Proposed findings of fact and conclusions of law submitted by defendants United States and Interstate Commerce Commission (but refused and not given by the court).

9. Findings of fact and conclusions of law submitted by the plaintiff and given by the court.

10. Final decree of May 25, 1944.

11. All minute entries and orders entered by the court in said proceeding which have not been hereinabove specifically called for.

12. All exhibits offered at the hearing by plaintiff and admitted in evidence by the court.

13. All exhibits offered by defendants and admitted in evidence by the court.

14. Petition of defendants United States and Interstate Commerce Commission for appeal and petition of intervening defendant, Regular Common Carrier Conference of American Trucking Associations, Inc., for appeal.

15. Assignment of errors filed by defendants United States and Interstate Commerce Commission and assignment of errors filed by intervening defendant, Regular Common Carrier Conference of American Trucking Associations, Inc.

16. Statement as to jurisdiction submitted by defendants United States and Interstate Commerce Commission and by intervening defendant, Regular Common Carrier Conference of American Trucking Associations, Inc.

17. Orders allowing appeal.

18. Notices pursuant to Rule 12 of the Supreme Court and proof of service thereof.

19. Citations on appeal and proof of service thereof.

217 20. Notices to the Attorney General of the State of Indiana and proof of service thereof.

21. This praecipe and any other supplemental praecipe or counter-praecipe which may be filed herein.

22. The Clerk's certificate.

B. W. LATOURETTE

B. W. LaTourette,

GREGORY M. REBMAN,

Gregory M. Rebman,

818 Olive Street, St. Louis, Mo.

Attorneys for Intervening Defendant.

HOWELL ELLIS,

Howell Ellis,

520 Illinois Building, Indianapolis, Ind.,

Local Counsel for Intervening Defendant.

218 Receipt of copy of the foregoing Praecipe for Transcript of Record acknowledged this 17th day of August 1944.

(S) FERDINAND BORN,

Attorney for Hancock Truck Lines, Inc.

Received a copy of the foregoing praecipe this 17th day of August 1944.

(S) B. HOWARD CAUGHRAN,

United States Attorney.

221 In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Civil Action No. 795

[File endorsement omitted.]

HANCOCK TRUCK LINES, INC., PLAINTIFF

vs.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION,
DEFENDANTS

Before Hon. Sherman Minton, Hon. Robert C. Baltzell, and Hon. Luther M. Swygert, Judges.

Official reporter's transcript of the evidence given on the hearing,

Indianapolis, April 8, 1944

Filed Aug. 22, 1944

223 Be it remembered, that in the District Court of the United States, for the Southern District of Indiana, Indianapolis Division, at the United States Court House, in the City of Indian-

apolis, Indiana, on Saturday, April 8, 1944, commencing at ten o'clock in the forenoon, the above-entitled cause, being at issue, came on for hearing before the Honorable Sherman Minton, Judge of the Circuit Court of Appeals for the Seventh Circuit, Honorable Robert C. Baltzell, Judge of the District Court of the United States for the Southern District of Indiana, and Honorable Luther M. Swygert, Judge of the District Court of the United States for the Northern District of Indiana, and the evidence given upon the hearing is in the words and figures following, to wit:

Appearances

The Plaintiff appeared by Albert Ward, Esq., Jacob Weiss, Esq., and Ferdinand Born, Esq., its attorneys.

The Defendants appeared by B. Howard Caughran, Esq., 224 United States District Attorney in and for the Southern District of Indiana, Nelson Thomas, Esq., attorney for the Interstate Commerce Commission, and Robert L. Pierce, Esq., Special Assistant to the Attorney General of the United States.

The Intervenor, ~~Regent~~ Common Carrier Conference of the American Trucking Associations, Inc., appeared by G. M. Rebinan, Esq., and Brainard W. LaTourette, Esq., its attorneys.

The plaintiff, to maintain the issues on its behalf, offered and introduced the following evidence, to wit:

Mr. WARD. The plaintiff now offers to introduce in evidence Exhibit A, attached to its complaint. Exhibit A attached to the complaint is offered in evidence as a true, correct, and complete 225 copy of the report, findings of fact, conclusions, and order of Division No. 5, which was referred to generally in Paragraphs 5, 6, 7, and 8 of the complaint.

Judge MINTON. Any objection?

Mr. THOMAS. No objection.

Judge MINTON. Show it read.

The said document, so offered and admitted in evidence, marked for identification "Plaintiff's Exhibit A."

226 Mr. WARD. The plaintiff now offers to introduce in Evidence Exhibit B, attached to its complaint, and it is offered as a true, correct, and complete copy of the report, findings of fact, conclusions and order of the full Commission, made upon reconsideration of the order of Division 5 aforesaid, and which is referred to generally in Paragraphs 9, 10, and 11 of the complaint.

Judge MINTON. Any objection?

Mr. THOMAS. No objection.

If the Court please, the Commission, both the Commission and the Government, in their answers, admit the correctness of the copies attached to the complaint.

Judge MINTON. Yes, I understand.

Mr. THOMAS. So that is all settled.

Judge MINTON. It may be admitted.

The said document, so offered and admitted in evidence, marked for identification "Plaintiff's Exhibit B."

227 Mr. WARD. The plaintiff now offers to introduce in evidence its Exhibit C attached to its complaint, and it is offered as a true, correct, and complete copy of the order made by the Commission on February 21, 1944, fixing the effective date of the order, which is complained of in the complaint, as March 31, 1944.

Mr. THOMAS. No objection.

Judge MINTON. It may be admitted.

The said document, so offered and admitted in evidence, marked for identification "Plaintiff's Exhibit C."

228 Mr. WARD. The plaintiff now offers to introduce in evidence its Exhibit D attached to the complaint, which is offered as a true, correct and complete copy of the order made by the Commission on March 13, 1944, denying an extension of time of the effective date of the order complained of beyond March 31, 1944.

Judge MINTON. Any objection?

Mr. THOMAS. No objection.

Judge MINTON. It may be admitted.

The said document, so offered and admitted in evidence, marked for identification "Plaintiff's Exhibit D."

229 Mr. WARD. Now, your Honors, I am in a little dilemma about my next exhibit, which would be Exhibit E and which I now offer as a certified copy of the application of the Globe Cartage Company, Inc., and the amendments thereto, which was filed with the Commission on or about the 26th of January, 1936.

I will have to ask permission to supply that. In some way in lodging our order with the Secretary of the Interstate Commerce Commission, we did not make plain to him that we wanted a certified copy of the petition, although we sent a copy of it to him, but we talked with him this morning and he has assured us that he will have it here early next week.

I have discussed the matter with Mr. Thomas and he has kindly said that the record might show it is offered and then be supplied, I believe, when it gets here. Is that right, Mr. Thomas?

Mr. THOMAS. That is very satisfactory.

Judge MINTON. Is that satisfactory?

230 Mr. THOMAS. Yes, sir.

Judge MINTON. Let the record show that it is offered at this time and will be supplied later.

Mr. WARD. The application and the amendments?

Mr. THOMAS. Both applications?

Mr. WARD. Yes; I think we might as well have them both.

Mr. THOMAS. The report states that both were filed so that, if you present one, it will be sufficient.

Mr. WARD. We will present the application for common carrier rights.

Mr. WEISS. MC-3339.

Mr. WARD. 3339. The other relates to contract carrier rights, which is out of the issue now.

The said document, so offered and admitted in evidence, marked for identification "Plaintiff's Exhibit E."

231 Mr. WARD. Exhibit F, identified by the Reporter as such, is now offered in evidence by the plaintiff as being a certified copy of the order made by the Commission on May 16, 1942, which authorized the purchase of the operating rights from Globe Cartage Company, Inc., by the plaintiff in this action, wherein it is shown that Major Riddle is connected with the Hancock Truck Lines.

Judge MINTON. There isn't any question about that. It is admitted in the record.

Mr. WARD. I would like to have the order in.

Mr. THOMAS. We have no objection.

Judge MINTON. All right. If there is no objection, it may be admitted.

Mr. WARD. I am offering just the order. Well, now; wait a minute.

Mr. WEISS. The report and the order.

Mr. WARD. The report and the order. They are separate, but they are both certified.

Mr. WEISS. That is the report and order in MC-F-1743.

The said document, so offered and admitted in evidence, marked for identification "Plaintiff's Exhibit F."

232 Mr. WARD. Now, if your Honors please, if I may try to simply this issue a little further probably, with the view of not encumbering this record with the evidence that was heard before the Commission, we have a certified copy of the evidence and, while I suspect our complaint would not justify an argument from us that we are challenging the findings of fact of the Commission, yet we have it here and, if anybody wants it, why, we are willing to put it in, but there are about two questions here that are denied, as to which, if we might have a statement from counsel for defendants, it might eliminate any further evidence.

First, we claim that we will be prejudiced and injured and damaged if this order, which we say is void, is made operative. So I suspect we will probably have to make proof of that orally unless we get some statement from these defendants that will

eliminate it. I don't think there is any question but what we can show that we will be substantially damaged.

I don't know what the position of the defendants will be in that connection, although I have discussed it with them some and they reserved the right to discuss it further.

Mr. PIERCE. If the Court please, we are not questioning the plaintiff's right to bring this suit at all—

Mr. WARD (interposing). No; that doesn't quite reach it.

Mr. PIERCE (continuing). On this question of irreparable injury, so-called.

Judge MINTON. There will be no question, if this order goes into effect, that they will suffer?

Mr. PIERCE. As I understand it, since this is a "grandfather" order, the plaintiffs here actually now do undertake operations to serve the public generally.

Mr. WARD. We do a large volume of business as we allege in our complaint.

Mr. WEISS. And did before the order.

Mr. WARD. Both before the order and now, so that, if that is taken away from us on any particular date, we will suffer irreparable damage.

Mr. PIERCE. And you took that over from the Globe?

234. Mr. WARD. Oh, yes.

Mr. THOMAS. If the Court please, we believe that any operations that they do outside of service to forwarders is done under the pendency clause of Section 206, which provides that, while an application is pending, the carrier may perform the duties, the operations, for which he asks a certificate, so that we do not question the legality of their doing outside business during the pendency of this application, which, in view of the Commission's extension of the effective date, is construed to be still pending.

Judge BALTZELL. You are admitting, are you, that, if this is taken away, it would be taking their business away from them?

Mr. THOMAS. Yes, sir; and we do say that, if the Court should find that this final order of the Commission is invalid and the Commission had no power in the premises to make it, it should be set aside. In other words, I think that takes care of this question of specific monetary damage.

235. Mr. WARD. Well, I don't want to be confronted with a moot question. I want this record to show that we are damaged.

Mr. THOMAS. Neither of us raised that question in our answers.

Mr. WEISS. And you agree, now, that we don't have to submit proof on that?

Mr. THOMAS. If the Court finds that this order of the Commission is void, it should set it aside.

Judge MINTON. All right. Well, then, you don't offer the evidence?

Mr. WARD. I think that will be our conclusion. I would like to discuss it with co-counsel briefly.

Judge MINTON. All right.

Mr. WARD. There is one further allegation in the plaintiff's bill which is not denied nor is it admitted nor do they claim they don't have knowledge. That is that the plaintiff has been operating all of this time as a common carrier and has on file with the Commission its tariffs and regulations and a full showing as to its facilities and so forth for meeting the public demands. They say that is immaterial. In other words, under the rules, that 236 probably might be termed an admission, but I am not so certain about it.

Judge MINTON. If they don't deny it, of course, it would be an admission if it isn't material.

Mr. WARD. Well, I don't know whether it is material or not, but I just wondered what they would have to say about it.

Mr. THOMAS. We allege it is irrelevant.

Mr. WARD. And they don't answer it for that reason.

Mr. THOMAS. The tariff, of course, conforms to the carriers' rights and, of course, the Commission can't confer any legal rights or take away any of the legal rights of the plaintiff or its predecessor here and, therefore, whatever they filed, the tariffs filed could not have any bearing on the issues in this case.

Mr. WARD. I think that is true, your Honors, and, if we are a common carrier, with the facilities of a common carrier, and have our tariffs on file and no complaint has been made of them, I 237 think that is a matter that you could take into consideration in determining the effect of this order. They find we are common carriers.

Judge MINTON. That would be a question of fact, wouldn't it, and that would be settled by the record?

Mr. WARD. Well, that is what I am trying to eliminate; going into all of these tariffs.

Mr. WEISS. They are very voluminous.

Mr. WARD. I think the Commission ought to know.

Judge MINTON. Did the Commission find anything along that line?

Mr. PIERCE. This is a "grandfather" application of the plaintiff's predecessor. Any operation that they may continue under their own rights, previously had, or under their successor's rights, didn't come into the case, as I see it.

Mr. WARD. They are not raising any question on that issue, as I understand it.

Judge MINTON. The tariffs are on file and admitted to be on file for whatever that proves?

Mr. PIERCE. Whose tariffs are these?

Mr. WARD. The Globe Cartage Company tariffs as a common carrier, which were assumed by us when the Commission authorized us to purchase it, and Hancock has its own, of course.

Mr. WEISS. They are their agency tariffs.

Mr. THOMAS. Well, they participate in the tariffs and they are filed by an agent and so they are, in effect, tariffs of the Globe.

Mr. WARD. That is right, assumed by us, and we are bound by them the same as Globe would have been when the Commission authorized us or Major Riddle to take over the operating rights.

Judge MINTON. You don't question that, do you, Mr. Thomas?

Mr. THOMAS. We don't question the Globe's right to have sold to Hancock and Hancock's entitlement to any rights that the Globe had, but we don't think tariffs are relevant to the issues in this case.

Judge MINTON. Anything else?

Mr. WARD. Just a minute. As I understand the rule, the allegations in the answer, which admit certain allegations in the bill, are treated as true by the court in consideration of the case.

238 Is that right? Admission of the allegations of our bill, as contained in their answer, do not have to be proved in the evidence; they are taken by the court as factually true?

Judge MINTON. Yes.

Mr. WARD. Now, your Honors, in order to make this record complete insofar as the orders of the Commission are concerned, some of which may be immaterial in view of the issue, we have asked Secretary Bartel to furnish us with a certified copy of all orders made by the Commission in relation to this particular Order MC-3339. I am not certain that they are material, but, if any party in interest wants them, we will have them here and they may be submitted in evidence, if they want them, at the argument.

Mr. THOMAS. We submit that the record should be made up now and we have no objection to the plaintiff putting in any and all orders of the Commission.

Mr. WARD. All right. Let it be marked as whatever the next exhibit is and we will put it in evidence. That will be our Exhibit G.

The said certified copy of orders, so offered, collectively marked for identification "Plaintiff's Exhibit G," was admitted and read in evidence.

240 Mr. WARD. Now, your Honors, I think I should state that, since the filing of this action, perhaps the next day, a stipulation was entered into between the plaintiff and the defendants whereby the Commission authorized an extension of the effective date of the order from March 31 until May 1st, 1944, and, in con-

sideration of that, we withdrew our application for a restraining order, but we are going to be up to the question of a temporary injunction if some further relief isn't granted to us on May 1st.

Mr. THOMAS. I would rather the record show that that wasn't in the nature of a stipulation. That was an action by the Commission at the request of the Judge—

Mr. WARD (interposing). Oh, no.

Mr. THOMAS (continuing). In order to avoid the necessity of calling in a three-judge court to hear the application for an interlocutory injunction.

Mr. WARD. Why, I thought that was a stipulation.

Mr. THOMAS. The discussion of it is comparatively immaterial. The order has been duly entered and the effective date has been postponed until May 1st.

Judge BALTZELL. I understand the stipulation just shows there was an order entered at that time?

Mr. WARD. That is right.

Mr. THOMAS. Oh, yes; there was one entered. The fact is that we allege in our answer that the order was entered.

Mr. WARD. There is no dispute about it.

Judge MINTON. That ought to bring us up to May 1st and, then, after the argument on the 28th, the Court will dispose of it on that day.

I suppose the Commission would accommodate the Court and grant a further extension of the time on the enforcement of the order if it should be necessary?

Mr. THOMAS. I am confident it would. I have no reason to doubt that, on request of the Court, it would enter another extension.

Mr. WARD. Could you advise us in advance of such an extension, because we would certainly have to make application for it otherwise. We are confronted with this order now.

242 Judge MINTON. Let the record show that the Court asks an extension for thirty days longer in order to have time to consider the briefs.

Mr. THOMAS. I will recommend it to the Commission, your Honor, and when we come out here for the argument, I expect that I will be able to announce to the Court that the extension has been entered.

Judge MINTON. Well, the Commission usually does that, and so we will rather rely on it.

Mr. WARD. It is a courtesy that we would like to have if we could get it in this case.

Judge MINTON. They usually grant those things and there is no reason why they wouldn't here.

Mr. THOMAS. Not at all.

Mr. WARD. We rest, your Honor.

(And the plaintiff here rested.)

243 Whereupon, the defendants, to maintain the issues on their behalf, offered and introduced the following evidence, to wit:

Mr. THOMAS. If the Court please, the Commission offers in evidence certified copies of the file taken from the Commission's records.

As the Defendant Commission's Exhibit No. 1, we offer in evidence the petition of The Cleveland, Columbus & Cincinnati Highway, Incorporated, Motor Express, Incorporated, and several other motor express companies for reconsideration by the Commission of the report of Division 5, dated November 10, 1942, in Docket No. MC-3339 and MC-3340.

Judge MINTON. Any objection?

Mr. WARD. Well, I haven't seen it, your Honor, but I would imagine it is wholly immaterial and would not be binding upon the plaintiff in this action.

244 Mr. THOMAS. The purpose of this and several other petitions which were filed prior to the action of the Commission as of a whole upon reconsideration is to show that this question of the limitation of transportation to operations which are moving under forwarded bills of lading was presented originally to the Division and that the plaintiffs, the applicants, had notice that that was an issue before the Commission.

Mr. WARD. Well, the record already shows that the Division denied that petition and decided against you on it, decided against the Commission on it, and decided that we were entitled to an unlimited certificate.

Mr. THOMAS. If the Court please, it shows the considerations leading up to the final action of the Commission. Of course, I offer it merely as to procedure. I am not offering it as conclusive or anything of that kind, but merely to show the course of the proceeding in that respect.

Judge MINTON. I think it may be admitted.

(The said petition, so offered and admitted in evidence, marked for identification "Defendant Commission's Exhibit No. 1.")

245 Mr. THOMAS. I offer in evidence next as Defendant Commission's Exhibit No. 2 the petition of Railroad Protestants in Central Freight Association Territory for reconsideration of the report and order of the Division.

This document is dated November 21, 1942, and filed in No. MC-3339.

Judge MINTON. Any objection?

Mr. WARD. I don't know why that should be competent here, your Honors. It is a petition by a competitor, asking the Commis-

sion itself to review the order of this Division. Undoubtedly it is by a competitor against our rights.

Mr. THOMAS. The Court will understand that all of these papers were served upon the applicant and it shows that they were charged with knowledge that this question was before the Commission. It certainly shows the course of the proceedings.

Judge MINTON. Do you have any objection?

Mr. WARD. No further objection that I can think of.

246 Judge MINTON. Subject to the objection, it will be admitted.

(The said petition, so offered and admitted in evidence, marked for identification "Defendant Commission's Exhibit No. 2."

247 Mr. THOMAS. I offer, as the Defendant Commission's

Exhibit No. 3, the Globe Cartage Company's reply to the petition for reconsideration and for oral argument of protestants, dated November 16, 1942, and filed in both Dockets MC-3339 and 3340.

Judge MINTON. Any objection?

Mr. WARD. No objection.

Mr. WEISS. We are bound by it.

(The said document, so offered, marked for identification "Defendant Commission's Exhibit No. 3," was admitted and read in evidence.)

248 Mr. THOMAS. I offer in evidence, as the Defendant Commission's Exhibit No. 4, the petition of the Regular Common Carrier Conference of the American Trucking Associations, Incorporated, for a reconsideration of the Division's report. This document is dated January 13, 1943, and filed in both MC-3339 and MC-3340.

Mr. WARD. Same objection. You can begin to see how much pressure was brought on Division 5 to change its opinion.

Mr. THOMAS. It didn't succeed with the Division, however.

Judge MINTON. It may be admitted subject to the objection.

(The said petition, so offered and admitted in evidence, marked for identification "Defendant Commission's Exhibit No. 4."

249 Mr. THOMAS. I offer in evidence, as the Defendant Commission's Exhibit No. 5, the reply of the Globe Cartage Company, the applicant, to petitions for leave to intervene and for reconsideration of the Regular Common Carrier Conference of the American Trucking Associations, Incorporated, and it is the last petition that I will have to offer except that of the plaintiff herein.

(The said document, so offered, marked for identification "Defendant Commission's Exhibit No. 5," was admitted and read in evidence.)

250 Mr. THOMAS. I offer in evidence, as the Defendant Commission's Exhibit No. 6, the petition for reconsideration filed by the plaintiff, the Hancock Truck Lines, in both Docket No. MC-3339 and MC-3340, and Docket No. MC-25567, Sub No. 8, which is a low number which was assigned to this matter, dated October 29, 1943.

That, if the Court please, is a petition for reconsideration which was filed after the report and order of the full Commission and in it we find a statement by the plaintiff here that, "We do not challenge, nor do we complain against, the restriction to serve only freight forwarders." We give up our claims to serve others, painful as this limitation is," and it is upon this that we base our contention that the plaintiff here has waived its objection which they now make to the Commission's action.

Mr. WARD. Now, as to that I have a special objection.

The objection is that there is no issue tendered here properly under the rules of waiver on behalf of the plaintiff in this
251 action as to its right to present this question to this Court, and for the further reason that Paragraph 10 of the answer of the Commission is nothing more nor less than the barest kind of a conclusion of the pleader that there has been a waiver of a certain constitutional or lawful right, with no facts alleged in the answer in support of that conclusion, and for that reason they tender no issue of waiver here; and for the further reason that it certainly comes with ill grace for the Interstate Commerce Commission of the United States to set up a void order and one which they admit, if it is enforced, will confiscate and take the petitioner's property without due process of law in violation of the Fifth Amendment, and it should not be urged as a waiver against anything that the applicant did in connection with his petition for rehearing, where he was trying to retrieve the routings set out in the application.

Mr. THOMAS. If the Court please, as alleged in Paragraph 10 of the Commission's answer, the plaintiff, successor to the rights of the Globe Cartage Company, on or about November 1st,
252 1943, filed its petition for reconsideration of the Commission's report and order of August 4, 1943—that, of course, is the final report and order—in which petition the plaintiff expressly waived objection to and did not challenge or complain against the restriction of the transportation authorized to commodities consigned by freight forwarders.

Now, if the Court please, I submit that the Commission's interest goes not only to this lawsuit but also the protection of the motor carrier industry generally. Now, this waiver here doubtless prevented regular common motor carriers, whose business would be cut into if, instead of limiting this application to goods

consigned by the forwarders as previously, as was the case during the "grandfather" period, Hancock was entitled, under this authority involved here, to go out and solicit, so that I submit that it is the Commission's duty to raise this point on behalf of the regular common motor carriers, who doubtlessly refrained from opposing this change, as they had done consistently in every other instance.

I submit that it is admissible.

Judge MINTON. It may be admitted subject to the objection.

Mr. WARD. An exception.

(The said document, so offered and admitted in evidence, marked for identification "Defendant Commission's Exhibit No. 6.")

254 Judge MINTON. Anything more?

Mr. THOMAS. That is all on behalf of the defendants.

(And the defendants here rested.)

Mr. WARD. We have no rebuttal.

Judge MINTON. Nothing further?

Mr. WARD. No, sir.

Judge MINTON. All right. We will see you on the 28th of April.

(Whereupon, the hearing was concluded.)

422 *Plaintiff's exhibit F*

INTERSTATE COMMERCE COMMISSION

No. MC-F-1743

HANCOCK TRUCK LINES, INCORPORATED—PURCHASE—GLOBE CARTAGE COMPANY, INC.

423 No. MC-F-1743

HANCOCK TRUCK LINES, INCORPORATED—PURCHASE—GLOBE CARTAGE COMPANY, INC.

Submitted January 23, 1942. Decided May 16, 1942.

Purchase by Hancock Truck Lines, Incorporated, of operating rights of Globe Cartage Company, Inc., approved and authorized, subject to condition

Ferdinand Born and Jacob Weiss for applicants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

Hancock Truck Lines, Incorporated, of Evansville, Ind., and Globe Cartage Company, Inc., of Indianapolis, Ind., herein called Hancock and Globe, respectively, by joint application filed December 23, 1941, seek authority under section 5, Interstate Commerce Act, for purchase by the former of operating rights of the latter for \$10,000. Hearing has been held, at which the parties waived service of an examiner's proposed report.

The corporate history of Hancock, an Indiana corporation, controlled through ownership of 100 percent of its outstanding capital stock by Major A. Riddle, is described in Hancock Truck Lines, Inc.—Purchase—Motor Freight Corp., 5 M. C. C. 405, 15 M. C. C. 435, and 35 M. C. C. 7. Pursuant to findings in Hancock Truck Lines, Inc., Common Carrier Application, 14 M. C. C. 403, an amended certificate was issued to Hancock in No. MC-25567, on June 10, 1940, authorizing operations in interstate or foreign commerce as a motor-vehicle common carrier of general commodities (a) over regular routes, serving specified intermediate and off-route points, between Evansville and Chicago, Ill., via

Vincennes and Terre Haute, Ind., between Evansville and Henderson, Ky., between Evansville and Louisville, Ky., between Vincennes, and St. Louis, Mo., between Terre Haute and Indianapolis, Ind., and between Evansville and Detroit, Mich., via Vincennes, Indianapolis, Fort Wayne, and Angola, Ind., and Coldwater, Mich., restricted to traffic moving to or from Evansville over this route, and (b) over irregular routes, between Chicago, on the one hand, and points and places in a defined area in northeastern Illinois, on the other. Under rights confirmed in No. MC-25567 (Sub-No. 1), it conducts similar regular-route operations between St. Louis and Louisville via Vincennes, and, under a certificate issued in No. MC-25567 (Sub-No. 4), it operates over certain short-cut routes between Evansville and Indianapolis. Hancock utilizes substantially more than 20 motor vehicles in its operations.

The corporate history of Globe, an Indiana corporation controlled through ownership of a majority of its outstanding capital stock by Major A. Riddle, president, and two members of his immediate family, is also described in the case first cited, and in Universal Cartage Co.—Purchase—Dixie Cartage Co., 37 M. C. C. 107. It transports general commodities in interstate or foreign commerce pursuant to two pending applications filed under the

"grandfather" clause. In No. MC-3339, it claims rights as a common carrier, serving all intermediate points, over routes, in territory bounded on the east by Buffalo, N. Y., and Pittsburgh, Pa.; on the south by Wheeling, W. Va.; Columbus and Cincinnati, Ohio, Louisville, and Evansville, on the west by St. Louis, and Peoria, Ill., and on the north by Chicago, Detroit, Cleveland, Ohio, and Erie, Pa.; and in No. MC-3340 it claims rights as a contract carrier for Universal Carloading & Distributing Company, a forwarding company, between the same points and over the identical routes. For the purpose of this proceeding, only the operations of Globe as a common carrier will be considered, and our findings will authorize purchase only of its rights to operate as a common carrier. Hemingway Bros. Interstate T. Co.—Purchase—Finkel Motor, 15 M. C. C. 702.

By agreement dated November 4, 1941, Hancock would purchase the operating rights of Globe under Nos. MC-3339 and MC-3340 for \$10,000, of which \$100 was paid as of the date of the agreement, and the remainder would be paid \$2,500 upon approval of the transaction by us, \$2,500 upon final approval by the last of the concerned State regulatory authorities, and \$4,900 within 10 days thereafter. Hancock's stockholders have agreed to contribute sums equal to the purchase price at the times and in the amounts necessary to meet the payments required under the agreement.

Hancock's balance sheet as of September 30, 1941, shows assets aggregating \$109,984, consisting of: Current assets \$55,134, 425 principally notes receivable \$10,628, accounts receivable, less reserve for uncollectible accounts, \$27,200, and material and supplies \$12,247; carrier operating property, less depreciation, \$48,527; and deferred debits, prepayments, \$6,323. Liabilities were: Current liabilities \$37,171, principally notes payable \$8,000, accounts payable \$15,857, and taxes accrued \$8,574; equipment and other long-term obligations \$18,137; reserves \$1,598; capital stock \$37,718; and unappropriated surplus, unearned \$20,980 and earned (debit balance) \$5,620. Its income statements for 1939, 1940, and the first 9 months of 1941 show net incomes of \$12,287, \$12,235, and \$18,481, respectively.

Globe's balance sheet as of September 30, 1941, shows assets aggregating \$166,153, consisting of: Current assets \$116,824, principally accounts receivable, less reserve for uncollectible accounts, \$113,235; carrier operating property, less depreciation, \$44,594; and deferred debits, prepayments, \$4,735. Liabilities were: Current liabilities \$67,620, principally accounts payable \$34,070 and taxes accrued \$22,549; equipment obligations \$16,074; reserves \$31,275; capital stock \$21,000; and unappropriated surplus, earned, \$30,184. Its income statements for 1939, 1940, and the

first 9 months of 1941 show net incomes of \$46,188, \$24,754, and \$19,531, respectively.

With certain exceptions, principally between Evansville and Prospect, Evansville and Indianapolis over certain short-cut routes, and Angola and Detroit, via Coldwater, Hancock's regular route operations are over routes duplicated by those claimed by Globe; the latter's operations, however, being considerably more extensive. Both carriers serve Louisville, Evansville, Indianapolis, Vincennes, Terre Haute, Detroit, St. Louis, and Chicago, among other points, and maintain duplicate terminal facilities at a number of such common points. Approximately 65 percent of Globe's traffic consists of business handled for the above-mentioned forwarding company, and as a result its flow of traffic is unbalanced. As an example, Globe's traffic is heavier west into St. Louis than in the reverse direction, necessitating dead-heading of equipment from that point. Hancock, on the other hand, enjoys heavier traffic east out of St. Louis than in the reverse direction. Globe does not believe it would be justified in expending additional funds in an effort to develop a better balanced operation, and, as its functions and facilities substantially duplicate those of Hancock, the desired result can be accomplished through unification of the operations in Hancock. The unification would result in better balanced lading between the common points now served, and in certain instances, principally between Louisville and Chicago, Chicago and St. Louis, and St. Louis and Indianapolis, would provide Hancock with shorter routes. Hancock has

426 the necessary organization to conduct the additional operations and would meet any increased equipment demands either by leasing additional equipment of owner-operators as at present, or by purchasing additional equipment. Savings through consolidation of overlapping functions, including terminal and pick-up and delivery facilities, application of Hancock's lower insurance rates, reduction in truck-miles operated empty, and through increasing the use factor of vehicles operated by transporting heavier loads, are estimated in excess of \$50,000¹ annually. No arrangements have been made respecting Globe's equipment,² but it is the intention of the parties to dispose of all the assets and surrender its charter for cancellation. Globe's regular employees would be afforded an opportunity to join Hancock's organization. Other competitive common carriers of property operate throughout the considered territory. The proposed unification is

¹ Of this amount, approximately \$20,000 represents the estimated cost to Globe, if latter remains in operation, in developing additional business to balance its present lading.

² Globe also utilizes the equipment of a substantial number of owner-operators, some of which Hancock proposes to employ.

in line with our purpose of encouraging corporate simplification in the interest of economical and efficient transportation.

As above indicated, Hancock is authorized to operate over a regular route, among others, between Evansville and Detroit via Vincennes, Terre Haute, Indianapolis, Angola, and Coldwater, restricted to transportation to or from Evansville.³ Globe, among other routes, claims rights to operate between Evansville and Detroit over the same route as above to Angola, thence over U. S. Highway 20 to Toledo, and thence to Detroit, serving all intermediate points. Prior to issuance of the amended certificate on June 10, 1940, Hancock transported shipments between Detroit, on the one hand, and points on the above route between Indianapolis and Evansville, including Indianapolis, on the other, and it is alleged that there is a present demand for resumption of such service. Hancock requests that we modify its operating authority over the considered route to permit it to perform such service. In addition, Hancock also requests authority to serve approximately eight Government projects, the exact locations of which are not specified, but which are stated to be not more than 15 miles from Indiana points it is now authorized to serve. In support of such requested modifications, it offered testimony of two of its officers. Such testimony is general in character and shows that there are other motor carriers operating in the territory who are in a position to perform service between the points considered. It would appear that, under the unification of rights as here proposed, Hancock will be authorized to perform part of the additional service as requested, for, as previously stated,

427 Globe now claims rights to operate between Evansville and Detroit largely over this route, serving all intermediate points. We are of the opinion that the enlarged operating authority requested as to Hancock's rights is a matter not directly related to the section 5 proceeding within the contemplation of the notice of hearing herein, but is more properly for consideration in a separate proceeding under section 207. The nature and extent of the service which Hancock may render in conducting operations under the unified rights must be governed by the existing rights as confirmed and lawfully claimed.

Hancock now has no amount recorded in its "Other Intangible Property" account, but the amount proposed to be paid for Globe's rights would be recorded in such an account. Hancock has indicated its willingness to amortize such amount and requests that a period of 10 years be allowed. Considering the net

³ A prior certificate issued in No. MC-25567, October 14, 1939, authorized service between Detroit, on the one hand, and all intermediate points on this route between Evansville and Indianapolis, including Indianapolis, on the other.

balance in surplus and Hancock's earning record, we are of the opinion the amount may be immediately written off without undue hardship, and our findings will be conditioned accordingly.

We find that purchase by Hancock Truck Lines, Incorporated, of common-carrier operating rights of Globe Cartage Company, Inc., upon the terms and conditions above set forth, which terms and conditions are found to be just and reasonable, is a transaction within the scope of section 5 (2) (a), and will be consistent with the public interest, and that, if the transaction is consummated, and pending determination of Globe's "grandfather" applications in Nos. MC-2339 and MC-3340, Hancock shall be entitled to conduct the common-carrier operations lawfully conducted under the "grandfather" clause pursuant to those applications, and will be entitled to a certificate covering any "grandfather" common-carrier rights which may be confirmed as a result of those applications, which rights are herein authorized to be unified with rights otherwise confirmed in Hancock, with duplications eliminated; provided, however, that, if the authority herein granted is exercised, Hancock Truck Lines, Incorporated, shall immediately write off to surplus account the amount properly assignable to its "Other Intangible Property" account as a result of the transaction.

An appropriate order will be entered.

428

Order

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C. on the 16th day of May, A. D. 1942

No. MC-F-1743

~~HANCOCK TRUCK LINES, INCORPORATED—PURCHASE—GLOBE
CARTAGE COMPANY, INC.~~

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is made a part hereof:

It is ordered, That purchase by Hancock Truck Lines, Incorporated, of Evansville, Ind., of operating rights of Globe Cartage Company, Inc., of Indianapolis, Ind., be, and it is hereby, approved and authorized, subject to the terms and conditions set out in the findings in said report.

It is further ordered, That, if the parties to the transaction herein authorized desire to consummate same, they shall (1) notify this Commission, in writing, of the intended consummation date, (2) promptly take such steps as will insure compliance with

sections 215 and 217 of the Interstate Commerce Act, and with rules, regulations, and requirements prescribed thereunder, and (3) confirm in writing to the Commission, immediately after consummation, the date on which consummation has actually taken place.

It is further ordered, That, unless the authority herein granted is exercised within six months from the date hereof, this order shall be of no further force and effect.

It is further ordered, That recital in said report of balance-sheet and other financial data shall not be construed as approving accounting methods which have been followed or expenditures represented thereby.

It is further ordered, That, before recording the purchase upon its books, Hancock Truck Lines, Incorporated, shall submit the related journal entries, in triplicate, to our Bureau of Motor Carriers for approval.

And it is further ordered, That nothing herein contained shall be construed as a determination of the operating rights of any person or persons under any section of the act, except section 5 thereof, as expressly determined herein.

By the Commission, division 4.

[SEAL]

W. P. BARTEL, *Secretary*.

430

Defendant Commission's Exhibit 2

Before the Interstate Commerce Commission

MC-3339

GLOBE CARTAGE COMPANY, INC., COMMON CARRIER APPLICATION

Petition of Railroad Protestants in Central Freight Association Territory, Official Classification Territory, Southern Freight Association Territory, South-Western Territory

(1) To reconsider and review the order of Division 5 of October 7, 1942.

(2) To stay effective date of order of Division 5 of October 7, 1942, which effective date is November 24, 1942.

(Nov. 21, 1942)

431

Now comes the petitioners, Railroad Protestants in Central Freight Association Territory, Official Classification Territory, Southern Freight Association Territory, and South-Western Territory, and respectfully request reconsideration by the

Commission of the Report of Division 5 rendered October 7, 1942; that said Order be modified and certain restrictions placed therein; and that the said Order be further stayed by the Commission.

ARGUMENT

The petitioners hereinabove named submit that Division 5 of the Commission erred in not placing certain restrictions in said Order of October 7, 1942, in view of the limited operations by the applicant as is substantiated by the evidence of record.

Petitioners submit that the concurring opinion by Commissioner Rogers in the within Application be adopted by the Commission and the said Order of October 7, 1942, be modified in accordance therewith. The said concurring opinion is hereinafter quoted.

"I approve the report. However, I believe that there is merit in the contention, discussed in the report, that any authority granted to applicant should be restricted to the type of traffic which applicant has exclusively transported since prior to the statutory date. This could be accomplished by a restriction of the authority to: * * * traffic which is, at the time of transportation by applicant, in the primary custody of and moving on bills of lading of freight forwarders, as defined in section 402 (a) (5) of part IV of the Interstate Commerce Act.' Freight forwarders do not occupy the mere status of a shipper."

432 From the Recommended Report and Order served September 24, 1942, in the applications of Midwest Haulers, Inc., MC-13900 and Sub No. 2, the following restriction and language is quoted:

"The examiner further finds in No. MC-13900 (Sub-No. 2) that the present and future public convenience and necessity require operation by applicant; in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities, which are at the time moving on bills of lading of freight forwarding companies * * *." (Sheet 6.)

The effective date of the Recommended Order served September 24, 1942, pending the further order of the Commission, was stayed by the Order of Division 5 of October 23, 1942.

In the Midwest case that operation was also for the Universal Carloading & Distributing Company. The Examiner in that report also referred to the holding by the Commission in the application of Albert Charles Gans, reported in 32 M. C. C. 416.

From the dissenting opinion of Commissioner Patterson in the instant Globe application, the following is quoted:

"This applicant since prior to June 1, 1935, has served only the Universal Carloading & Distributing Company under written contracts and has never held itself out to serve the general public. In my opinion it is and has been exclusively a contract carrier."

CONCLUSION

Wherefore, petitioners respectfully request that the Order of Division 5 of October 7, 1942, be so modified and restricted as to traffic and that limitations be placed therein only authorizing the transportation of general commodities which are at the time moving on bills of lading of freight forwarding companies; and that the Report of Division 5 of October 7, 1942, which becomes effective November 24, 1942, be further stayed by the Commission.

Respectfully submitted.

OSCAR LINDSTRAND,

Oscar Lindstrand,

Counsel for Protestant Rail Carriers.

433

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing petition has been served this day upon all parties of record, by mail, first class postage prepaid, and my signature below constitutes the signature required by Rule 17A of the General Rules of Practice.

OSCAR LINDSTRAND,

Oscar Lindstrand.

NOVEMBER 21, 1942.

434

Deft. Commission's Exhibit 1

Before the Interstate Commerce Commission

Docket Nos. MC-3339, MC-3340.

GLOBE CARTAGE COMPANY, INC., COMMON CARRIER APPLICATION

Petition of the Cleveland, Columbus & Cincinnati Highway, Inc., Motor Express, Inc., and Motor Express, Inc. of Indiana for Reconsideration by the Commission of the report of Division 5, decided October 7, 1942, and for oral argument in connection therewith.

Nov. 12, 1942

435

Comes now petitioners, The Cleveland, Columbus & Cincinnati Highway, Inc., Motor Express, Inc., and Motor Express, Inc. of Indiana and respectfully request reconsideration by the Commission of the report of Division 5, decided October 7, 1942, and oral argument in connection therewith. Petitioners request said reconsideration in the following respect and for the following reason:

1. Division 5 erred in failing to restrict the authority granted to applicant to traffic which is, at the time of transportation by applicant, in the primary custody of and moving on bills of lading of freight forwarders, as defined in Section 402 (a) (5) of Part IV of the Interstate Commerce Act.

HISTORY OF THE CASE

This proceeding involves the applications of Globe Cartage Company, Inc., hereinafter referred to as "Applicant," for a certificate or a permit under the so-called "Grandfather Clause" of the Interstate Commerce Act, Part II. The operations involved in both applications are identical except that one requests authority as a common carrier while the other requests authority as a contract carrier.

Hearing was held on said applications at Toledo, Ohio on November 6, 1939, at which time numerous parties protested the granting of the authority sought. On August 17, 1940, the report and order recommended by the Examiner was issued which recommended that applicant be granted authority to operate as a common carrier in the transportation of general commodities in truckload quantities over routes and between points as were specifically set forth in Appendix B attached to said order. The application for contract carrier authority was denied in full. Various protestants filed exceptions to the report and order, contending that the Examiner erred in recommending that applicant be granted authority to operate over certain routes and between certain points and for the further reason that the Examiner failed to restrict the authority to the type of operations that applicant had conducted on and prior to June 1, 1935, and continuously thereafter. On October 26, 1942, the report of Division 5 was served on the parties. Said report grants to applicant authority to operate over certain routes and between certain points as are specifically described in Appendix B attached to said report as a common carrier of commodities generally without restriction. Division 5 refused to restrict the authority so granted to that type of operation which applicant conducted, namely, for forwarding companies only. In this connection, Division 5 held as follows:

"Section 203 (a) (14) of the Act provides that the term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle of passengers or property for compensation. We cannot, consistently with applicant's common carrier status, restrict its service to particular shippers, namely, freight forwarders, and to restrict the traffic which it may transport to shipments made by

freight forwarders would in effect and result be a restriction of applicant's service to such forwarders."

In this connection, it should further be pointed out that, while Commissioner Rogers approved the report, nevertheless in a separate opinion he did state that it was his belief that there was merit in the contention of protestants that applicant should be restricted to traffic which is, at the time of transportation by applicant, in the primary custody of and moving on bills of lading of freight forwarders. Commissioner Patterson, in dissenting from the report, stated that it was his opinion that applicant has been exclusively a contract carrier, inasmuch as, since

437 prior to June 1, 1935, applicant has served only the Universal Carloading and Distributing Company under written contracts and has never held itself out to serve the general public. Petitioners respectfully contend that Division 5 erred in failing to restrict the authority granted to applicant to traffic which is at the time of transportation by applicant in the primary custody of and moving on bills of lading of freight forwarders as defined in Section 402 (2) (5) of Part 4 of the Interstate Commerce Act.

ARGUMENT

Before discussing the legal aspects involved in petitioner's contention, certain basic facts must be set forth. It should further be noted with respect to said facts that they are admitted and there appears to be no dispute whatsoever with respect thereto. As its proof of operations conducted since prior to June 1, 1935, applicant offered only evidence of service performed for the Universal Carloading and Distributing Company which will hereinafter be referred to as "Universal." The record discloses that applicant relied entirely on the operations for Universal as a basis for proving its case. It is admitted that applicant's operations on and prior to June 1, 1935, and since that date have been for Universal, which is a freight forwarder within the definition of that term as defined in Part IV of the Interstate Commerce Act. The record further describes the type of operation conducted which has consisted of a so-called dock to dock movement in the handling of truckload quantities for Universal. In other words, applicant's vehicles have been loaded at the docks of Universal and seals placed thereon. The vehicles have then been moved to docks of Universal in other cities where they were unloaded after the seal was broken by the Universal employees. The shipments moved on a so-called "manifest" of Universal subject to rates and charges existing in a contractual agreement between Universal and the applicant. Applicant had no dealings

with the original shipper whatsoever. The applicant had no contractual agreement in the form of a bill of lading or otherwise with the original shipper.

438 The record further discloses that the original shipper looked to Universal for satisfaction of any claims arising out of damage or loss to merchandise. In other words, Universal was looked to by the shipper for the satisfaction of such claims, and it, in fact, paid such claims to the shipper. The applicant was then looked to by Universal for reimbursement.

It is obvious then, without dispute, that applicant's operations on and prior to June 1, 1935, and thereafter involved only the transportation of traffic for Universal in a so-called dock to dock movement. Petitioner contends that under those circumstances the Commission should have restricted applicant's authority to traffic, which at the time of transportation by applicant is in the primary custody of and moving on bills of lading of freight forwarders as defined in the Act. Division 5 in its report rejected that contention. The Division relied on Section 203 (a) (14) of the Act, which provides that a common carrier by motor vehicle means any person which holds itself out to the general public to engage in transportation by motor vehicle for compensation. Relying on this section, the Division held that it cannot consistently with applicant's common carrier status, restrict its service to particular shippers, namely, freight forwarders. It is true that applicant, in line with various decisions of the Commission, is a common carrier, American Motor Dispatch, Inc., Common Carrier Application, 26 M. C. C. 346; Howey Cartage Company, Contract Carrier Application, 28 M. C. C. 102.

It may be accepted as an established principle that carriers who perform a service for a freight forwarder are conducting operations as common carriers. The next question which logically arises is whether or not that common carrier status precludes a restriction which would limit said carriers to that type of operation. The Division held that it cannot consistently with applicant's common carrier status, restrict its service to particular shippers, namely freight forwarders. This Commission has 439 held that forwarders, such as Universal, have the status of shippers with respect to the carriers employed by them—Freight Forwarding Investigation, 229 I. C. C. 201. However, this Commission has also held that forwarders such as Universal are common carriers at common law and have such a status—Acme Fast Freight, Inc., Common Carrier Application, 8 M. C. C. 211. It is apparent then that freight forwarders under the Commission's decision not only have the status of shippers—they are more than shippers. They are, in effect, common carriers. Assuming, however, for the sake of argument, that said forwarders

must be considered as shippers only, it nevertheless does not follow that carriers who operate exclusively for them cannot legally be restricted to that type of service. It is admitted that under the Act a common carrier service cannot be restricted to certain shippers. There can be, however, no valid criticism of a limitation on the class of property to be transported or a restriction defining, in terms of the property which applicant shall be authorized to transport, the particular kind of common carrier service which it shall be authorized to perform.

Section 203 (a) (14) of the Act defines common carriers by motor vehicle, and in so doing, speaks in terms of those who hold themselves out to transport property or any class or classes thereof. This Commission has always recognized that it has the legal right and duty to specify the service to be rendered, and it has further recognized that that service may be as readily defined in terms of the particular commodity or class of commodities to be transported as in any other way. Section 208 of the Act requires that certificates granted it specify the service to be rendered. The situation involved here is clearly analogous to the cases in which the Commission has restricted common carrier applicants proposing to serve only the Railway Express Agency. In dozens of such cases this Commission has restricted such common carrier authority to the transportation of general commodities in express service, general commodities which are at the time moving on bills of lading of the express company, or general commodities which are at the time in the primary custody of and moving on bills of lading of an express company. *Railway Express Agency, Inc., Extension*, 26 M. C. C. 641; *Earl S. Bosworth, Contract Carrier Application*, 27 M. C. C. 781. It is extremely difficult to see any factors which could be held to distinguish the situation involved in this proceeding from that involved in the *Express Agency* cases. In those cases the Commission recognized that it had the legal right under the Act to restrict a common carrier service by specifying the type of service to be performed. It has recognized that same right in numerous cases involving common carrier certificates for the performance of a substituted rail service—*Pennsylvania Truck Lines, Inc., Common Carrier Application*, Docket No. MC-43157, decided March 24, 1942. Moreover, this Commission has innumerable times authorized special types of common carrier service which are limited solely by restrictions in terms of the class of property to be transported such as bulk liquids, heavy machinery, iron and steel products, or such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses. In the proceeding now before the Commission, Division 5, however, stated that "To restrict the traffic which it may transport to shipments

made by freight forwarders would, in effect and result, be a restriction of applicant's service to such forwarders." There can be no questioning of this statement. Indeed, the purpose of the restriction is to restrict applicant's service in such a way that it will be limited to operations for freight forwarders. While that may be the end which is sought, there still exists no legal prohibition against this Commission specifying the service in terms of the particular commodity or class of commodities to be transported. Division 5's statement is just as applicable to the Express Agency cases, the substituted rail cases, the steel hauler cases; and, in fact, every case which involves the specifying of the service to be rendered in terms of the class of commodities to be transported.

When the Commission restricted the Railway Express
441 Agency certificates to commodities which are at the time in the custody of and moving on bills of lading of the express company, it did nothing more in effect than restrict the operations to serving the Railway Express Agency. The same is true of the restrictions placed in the various certificates issued for substituted rail service. When a common carrier certificate specifies that only iron and steel products may be handled, what is the effect? It is clear that the effect of such a certificate is to limit the operations to the serving of shippers of iron and steel products. The Commission has never in the past looked to the legal effect of a restriction to determine whether it might properly be imposed.

The Commission has held that it may impose restrictions as to the class of property to be transported, regardless of the effect of the restriction. Moreover, this Commission has already, in a case involving the identical circumstances involved in this proceeding, held that it may limit service to the transportation of general commodities which are at the time moving on bills of lading of freight forwarding companies.

We wish to refer the Commission's attention at this time to the case of Albert Charles Gans, Common Carrier Application, 32 M. C. C. 416. In that case, the Commission discussed the very problem involved in this proceeding and arrived at the conclusion that it could legally and properly restrict a common carrier certificate to the transportation of traffic which is at the time moving on bills of lading of freight forwarding companies. We quote as follows from Pages 418 and 419 of the Commission's decision in that case:

"We cannot, consistently with applicant's common-carrier status, restrict its service to certain shippers, namely, forwarders, but there can be no valid criticism of a limitation on the class of property to be transported or a restriction defining, in terms of the property which applicant shall be authorized to transport, the particular kind of common-carrier service which it shall be

authorized to perform. Indeed, section 203 (a) (14) of the act, defining common carriers by motor vehicle, speaks in terms of those who hold themselves out to transport 'property, or any class or classes thereof.' The situation is closely analogous to those cases in which we have restricted common-carrier applicants proposing to serve only the Railway Express Agency 442 to the transportation of general commodities 'in express service' or 'general commodities which are at the time moving on bills of lading of a railway express company.' By the same token, we believe that we properly may restrict applicant here to the transportation of shipments which are at the time moving on bills of lading of freight-forwarding companies. In this connection, it is significant that section 208 of the act requires that certificates granted shall specify 'the service to be rendered.' Service, which we are required to specify, may as readily be defined in terms of the particular commodity or class of commodities to be transported as in any other way. For example, we almost daily authorize special types of service which are limited solely by restrictions in terms of the class of property to be transported, such as 'bulk liquids,' 'heavy machinery,' or 'such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses.' The service herein authorized will be limited to the transportation of general commodities which are at the time moving on bills of lading of freight-forwarding companies."

Petitioner respectfully contends that this Commission has the legal right under the Interstate Commerce Act, Part II, to specify the service to be rendered in terms of the class or classes of commodities to be transported. Moreover, it has this right, regardless of the fact that the effect of such a restriction may be in effect to restrict the service to certain shippers. If the effect of the restriction is to be considered, Section 208 of the Act, requiring certificates to specify the service to be rendered, will be nullified, and Section 203 (a) (14) of the Act, defining common carriers as those who hold themselves out to transport property or any class or classes thereof, must be held to have no significance or reason for existence so far as the last clause thereof pertaining to class or classes thereof is concerned.

Petitioner respectfully urges that the Commission may legally and properly place such a restriction in common carrier certificates as it has done in the past. Moreover, it should be pointed out at this time that this problem is not a purely legal matter nor purely academic. It is a very practical problem to the motor carriers who will be faced or can be faced with wholesale additional competition in the event that the restriction is not adopted.

Applicant herein has been granted authority to transport general commodities over 23 routes which cover the greater
 443 part of Central Territory and every important point located therein. If this applicant is permitted to expand its service by transporting freight for the public generally in the transportation of all class or classes of property a very imposing new truck system will enter the field in competition with existing carriers. Moreover, the problem is not confined to this carrier alone. There are numerous other cases pending before this Commission which involve widespread operations of the very type herein involved. If the restriction is not adopted, many new widespread systems of operations will be brought into the field and facilities for serving the public generally in the transportation of all classes of property will be multiplied many times to the damage and prejudice of those carriers who have for years maintained such a service in the territory.

An operation such as that conducted by this applicant since prior to June 1, 1935, involving as it does only a dock to dock service for Universal, is one of the simplest operations which exist in the motor carrier industry. It is indeed one of the easiest types of operation to institute if you can make arrangements with the forwarder for the transportation of the traffic. No great organization is required, and terminal facilities in the various cities served are unnecessary. To permit as a practical matter such operations to become a basis for a certificate which will permit such carriers to handle all classes of property for the general public will be manifestly unfair to the many carriers who have, since long prior to June 1, 1935, maintained extensive organizations and facilities to transport all types and classes of property for any one who may have called on them to do so. Petitioners respectfully contend that such a restriction may legally be adopted by this Commission and should be adopted.

CONCLUSION

Wherefore, Petitioners respectfully request that the authority granted to applicant be restricted to traffic which is at
 444 the time of transportation by applicant in the primary custody of and moving on bills of lading of freight forwarders, as defined in Section 402 (a) (5) of Part IV of the Interstate Commerce Act. Because of the importance of the question involved herein, petitioner also requests opportunity for oral argument in connection therewith.

Respectfully submitted.

P. J. HERGENROEDER,

Attorney for The Cleveland, Columbus & Cincinnati Highway, Inc., Motor Express, Inc. of Indiana and Motor Express, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on all parties of record, or their counsel, by mailing a copy thereof, properly addressed, postage paid.

Dated at Cleveland, Ohio, this 10th day of November 1942.

P. J. HERGENROEDER.

445

Defendant Commission's Exhibit 3

Before the Interstate Commerce Commission

Dockets No. MC-3339 and MC-3340

GLOBE CARTAGE COMPANY, INC.—COMMON CARRIER APPLICATION

Applicant's reply to petition for reconsideration and for oral argument of protestants Cleveland, Columbus & Cincinnati Highway, Inc.; Motor Express, Inc.; and Motor Express, Inc. of Indiana

Nov. 20, 1942

446

Comes now the applicant, Globe Cartage Company, Inc., and files this Reply to the petition for reconsideration and oral argument of the Cleveland, Columbus & Cincinnati Highway, Inc., Motor Express, Inc., and Motor Express, Inc., of Indiana. Applicant respectfully submits that such request for reconsideration and for oral argument should be denied for the following reasons:

A. To hold that applicant is a common carrier and then to prohibit applicant from serving the general public would do violence to the clear terms of the Motor Carrier Act.

B. A restriction in a Certificate which might be appropriate under circumstances where the applicant is seeking new authority and where such applicant consents to such restrictions is not proper in a Certificate granted to a nonconsenting "grandfather" applicant.

C. The petition of the petitioners does not conform to the requirements laid down by the Rules of Practice of the Interstate Commerce Commission, and therefore should be given no consideration.

ARGUMENT

The document entitled "Petition of the Cleveland, Columbus & Cincinnati Highway, Inc., Motor Express, Inc., and Motor Express, Inc., of Indiana for Reconsideration by the Commission of the Report of Division 5, Decided October 7, 1942, and for Oral

Argument in Connection Therewith" is predicated upon one proposition and one proposition alone, namely: That applicant should be restricted to transportation of commodities generally "in the primary custody of and moving in bills of lading of freight forwarders" as defined in Section 402 (2) (5) of Part IV of the Interstate Commerce Act.

Petitioners rely upon the provisions of the Motor Carrier Act (Section 203 (a) (14)), defining common carriers, which speaks in terms of those who hold themselves out to transport property or any "class or classes" thereof. The petition must stand or fall upon the power of the Commission to circumscribe the language used by Congress and intended by Congress at the time of the enactment.

It is elementary to state, and we would not burden the Commission by a citation of authority, that the words "class or classes" when used in connection with property and the definition of a motor carrier had reference to a specific, definite, and clear technical usage, namely: property which, at the time of the enactment, was classified in classifications, tariffs, and schedules. Therefore, in using the words "class or classes" Congress intended to and did circumscribe the power of the Commission in its restrictive power. That is to say, in the determination of a common carrier authority and in issuing a certificate for the hauling of commodities, the Commission was to restrict common carriage to a class or classes of property; and the Commission cannot, by the use of such a device, limit the authority to certain classes of shippers.

"Class or classes" as used in the Act refers to property which, as a rule, was set up in a tariff or tariffs then in vogue, and in the usage of the trade confined within some tariff schedule or schedules. See *Rea vs. Mobile etc. Co.*, 7 I. C. C. 43; *Barrett vs. Chicago, etc. R. Co.*, 20 I. C. C. 79; *Express Rates*, 83 I. C. C. 606.

At the time of the consideration of the Motor Carrier Act by Congress, there had never been and there was not then in existence any class or classes of property which could be said to be freight forwarder property. The freight forwarder, as he existed and as considered before Congress at that period, was a shipper which was engaged as a common carrier at common law in the assembly, consolidating, and actual transportation, or provision therefor, of every conceivable class or classes of property.

Congress was aware of the existence of the freight forwarder at the time the Motor Carrier Act was passed. The report of the Senate Committee hearings held on April 10th to 19th, 1934, of the bill (S. 3266) to amend the Railway Labor Act (73rd Congress, 2nd Session) shows that Congress was cognizant of the freight forwarder.

Later, in reenacting the Railroad Retirement Act, after the first such Act was declared unconstitutional in 1934, two new bills (H. R. 8551 and S. 3151) were introduced, each of which, in their original form, included freight forwarders under the definition of carriers. However, in the legislative process, those definitions were eliminated. The existence of the freight forwarder, however, was a matter concerning which Congress was aware. And that is the point. Whether a freight forwarder is a shipper or a carrier, certainly, it is not a class of property nor is it a shipper or carrier of any well-defined classes of property other than commodities generally.

Further, there is a distinction between an application predicated upon operations existing on June 1, 1935, and operations subsequently begun. The former, a "grandfather" operation, was to meet a test for a Certificate before the Commission upon facts altogether different than the latter, or "new" operation. A "grandfather" operation was not to be tested by convenience and necessity but merely, by the question of holding out, backed by an actual service on June 1, 1935, and continuously thereafter. The latter, or "new" operation, was to be tested by convenience and necessity, and the Commission in the latter case had and has the authority to determine what the "convenience and necessity" of the public, according to the facts shown of record, would require.

It becomes apparent immediately, when distinguished as hereinabove, that the test of holding out an actual service is not a consideration in a new or beginning application, whereas it is the supreme and all-encompassing test in a "grandfather" application.

Your applicant, Globe Cartage Company, Inc., in the instant case was a "grandfather" applicant, and the question of test to determine its Certificate and the scope thereof is simply: What did it do on June 1, 1935, that it has continued to do? By this test, it is clear that it hauled every conceivable class and classes of commodities and, therefore, was a common carrier of commodities generally. In its "grandfather" application as filed, which was made a part of the record in this case, an Exhibit on the first page of said Exhibit B-1, C-2, there are letters from seven different shippers other than Universal Carloading & Distributing Co. whose businesses ran the gamut of that which is handled by a salvage company, a canning company, a tire company, a nut margarine company, a flour, feed, and grain company, a warehouse and storage company, and an electrical motor and accessory company, namely: National Salvage Company, 450 Stokely Brothers Canning Company, Inc., Goodyear Service, Inc., Indiana Nut Company, B. J. Gibson Company, Strohm Warehouse and Storage Company, and Manufacturers Supply

Company, all of which is to be taken into consideration in the test of whether or not it was holding out in the actual transportation of any class or classes of property.

The Albert Ganz Common Carrier Application case, 32 M. C. C. 416, relied upon in the motion for reconsideration is not a persuasive authority. First, it is a new or beginning application, and not a "grandfather" application. Second, the carrier himself expressed a desire to limit his service to that moving on bills of lading of freight forwarding companies. There was no question in that case of holding out, nor of continuous operation since. It was merely a question of what the "convenience and necessity" of the public dictated, measured by applicant's desire to render service. It is patent that the Commission found that the "convenience and necessity" of the public as proven in the Ganz case was for a service limited to freight moving on the bills of freight forwarding companies and as circumscribed by the desire of the applicant to so engage himself.

There seems to be a confusion on the part of the petitioner for reconsideration by reason of some loose language employed in the Ganz case to the effect that the Commission had authority in the Railway Express Agency cases to limit service to applicants in the Railway Express cases to the transportation of general commodities which are at the time moving on bills of lading of the Railway Express Company. This confusion is readily understandable. It flows from a miscomprehension of the nature of the applications involved. Railway express is a known, defined service wherein articles of light weight, high rate, or extreme value are moved in railway passenger cars. "Express" as
451 such was a definite, clearly understood "class" of property, and so understood by Congress at the time of the enactment of the Motor Carrier Act.

This is clearly the case as evidenced by the concurring opinion of Commissioner Eastman in the case of Railway Express Agency, Inc., Determination of Status, No. MC-66562, reported at 1 Federal Carrier Cases, 2155, in which the following language appears (Page 472):

"There is nothing which an express company undertakes to carry which it is not the duty of the ordinary railroad company to carry, but with respect to a *class of traffic, particularly small packages, which requires expedited service and special attention*, the express company is permitted to function in order to secure the benefits of specialization and centralization in organization." [Italics supplied.]

Thus, it is evident that when one speaks of property transported by express companies, certain recognized classes of property (small packages, valuables, etc.) are clearly understood.

On the other hand, to refer to property as property transported by freight forwarders conveys no intelligence, since the property handled by freight forwarders includes every conceivable type of commodity and class of property with the possible exceptions of freight in bulk and small and valuable articles.

Further, in the findings of the Commission in the Railway Express Agency, Inc., case, supra, the Commission finds as follows:

"That where motor carriers in their own right perform service for the Agency or any of its subsidiaries, such motor vehicle operations are not those of the Agency or its subsidiaries within the meaning of Section 203 (a) (14) of Part II of the Interstate Commerce Act."

It follows, therefore, that such motor carriers rights are independent of the express company. In like manner, the rights of the applicant, Globe Cartage Company, Inc., are completely independent of Universal Carloading and Distributing Company.

452 It is noteworthy that nowhere in the Railway Express Agency, Inc., cases is there any mention that any such independent motor carriers should in any way be limited to the transportation of property, the original bill of lading of which was issued by an express company.

Petitioners cannot take any comfort in those cases where the express company itself is limited by certificate to the transportation of property usually transported by express companies, in those cases where, under authority of the Railway Express Agency, Inc., case, certificates were issued to the express company for operations conducted by itself for itself, as opposed to the instances where the transportation was performed for the express company by other motor carriers in their own right.

In the first place, as pointed out above, property transported by express companies are of a distinctly recognizable class.

In the second place, in the applications filed by the express company for certificates, the express company limited its prayer to the acquiring of the right to transport just that class (express) of property. In other words, just like in the Ganz case, supra, the express company consented to such restriction.

In the instant case, however, neither by the application nor by any subsequent conduct has applicant consented to such restrictions.

Therefore, the express company cases are of no value in the decision of this case.

453 The section of the Act defining a common carrier (Sec. 203 (a) (14)) defines such carrier as one who

"undertakes * * * to transport passengers or property, or any class or classes of property for the general public * * *"

Any artificial interpretation of the term "class or classes" which actually prohibits a carrier to serve "the general public" vitiates the definition as Congress laid it down.

Either applicant is or is not a common carrier.

If it is a common carrier, then it is authorized to transport for the general public the class of property (which, in this case, is conceded to be commodities generally) which it has been transporting in the past.

So much for the merits of the alleged petition for reconsideration.

But such petition is not entitled to consideration on its merits, since it violates Rule 101 (a) of the Rules of Practice of this Commission by failing to indicate in the prayer that it is a petition for reconsideration.

By reason of the foregoing, it is respectfully submitted that the said petition be denied.

Respectfully submitted.

JACOB WEISS,

Attorney for the Applicant.

454

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on all parties of record, or their counsel, by mailing a copy thereof, properly addressed, postage paid.

Dated at Indianapolis, Indiana, this 16th day of November 1942.

JACOB WEISS.

455

Defendant Commission's Exhibit 4

Before the Interstate Commerce Commission

No. MC-3339, MC-3340

IN THE MATTER OF GLOBE CARTAGE COMPANY, INC., COMMON CARRIER APPLICATION

Petition of the regular common carrier conference of the American Trucking Associations, Inc., for reconsideration by the Commission of the report of Division 5, decided October 7, 1942

Jan. 15, 1943

456

Comes now your intervenor, Regular Common Carrier Conference of the American Trucking Associations, Inc.,

and respectfully requests reconsideration by the Commission of the report of Division 5, decided on October 7, 1942 in the above-entitled case.

Reconsideration is asked for the following reason:

(1) Division 5 erred in failing to restrict the authority granted to applicant to traffic which is, at the time of transportation by applicant, in the primary custody of and moving on bills of lading of freight forwarders, as defined in Section 402 (a) (5) of Part IV of the Interstate Commerce Act.

HISTORY OF THE CASE

This proceeding involves the applications of Globe Cartage Company, Inc., hereinafter referred to as "Applicant," for a certificate or a permit under the so-called "Grandfather Clause" of the Interstate Commerce Act, Part II. The operations involved in both applications are identical except that one requests authority as a common carrier while the other requests authority as a contract carrier.

457 Hearing was held on said applications at Toledo, Ohio, on November 6, 1939. On August 17, 1940, the report and recommended order by the Examiner was issued which recommended that applicant be granted authority to operate as a common carrier in the transportation of general commodities in truck-load quantities over routes and between points set forth in Appendix B, attached to the order. The application for contract carrier authority was denied in full. On October 26, 1942, the report of Division 5 was served on the parties. This report would grant to applicant the authority to operate over certain routes and between certain points, and grants to applicant authority as a common carrier of general commodities without restriction. Division 5 refused to restrict the authority to that type of operation which applicant conducted i. e., for forwarding companies only.

The facts in regard to operations are fully set forth in the report. This intervenor urges the Commission to reconsider its findings in regard to the terms and conditions of the certificate to be issued to the applicant. We submit that the Commission erred in failing to restrict the authority granted to applicant to traffic which is, at the time of transportation by applicant, in the primary custody of and moving on bills of lading of freight forwarders. We submit that the Commission erred in stating that it cannot restrict applicant's service to freight forwarders.

ARGUMENT

The applicant has always operated a service limited to freight forwarder traffic and considered itself a contract carrier subject to the Permit Sections of the Act.

458 Section 203 (a) (14) defines "common carrier by motor vehicle" as follows:

"The term 'common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any *class or classes thereof* for compensation * * * [Italics supplied.]

The Commission has heretofore considered this question in Albert Charles Gans, Common Carrier Application MC-32416, 32 M. C. C., 416, under comparable circumstances authorized the transportation of general commodities "which are at the time moving on bills of lading of freight-forwarding companies."

In Maurice Carl Mayhew, Common Carrier Application, 27 M. C. C., 205, Docket Nos. MC-6355 and MC-6355 (Sub-1), the right was granted to haul general commodities "which are at the time moving on bills of lading of a railway express company."

In No. MC-45192, James E. Merriman and Joseph H. Hunter, Common Carrier Application, 17 M. C. C., p. 285, the Commission held:

"Section 203 (a) (14) of the act contemplates that a common carrier may transport only a '*class or classes of property*' and we have found in former cases that the authority issued under the '*grandfather*' clauses of sections 206 (a) and 209 (a) of the act should reflect any limitation in the undertaking of common carriers as indicated by the service actually rendered on the statutory date. They also contend that on and prior to June 1, 1935, they were holding themselves out to the shipping public to transport general commodities. Although, as stated, they transported general commodities subsequent to that date, the evidence submitted does not convince us that they either transported or held themselves out to transport general commodities on or prior to the statutory date." [Italics supplied.]

459 In No. MC-61766, Dakota Transportation, Incorporated, Common Carrier Application, 3 M. C. C., p. 624, the Commission held:

"It is argued that the act does not require that the certificate specify the commodities to be transported, and that an applicant's authority need not be confined to any special commodities even though its transportation happened to be so limited as of June 1, 1935. Section 203 (a) (14) of the act clearly contemplates

that a person may be a common carrier of a 'class or classes of property'. Applicant so limited its undertaking in its operations eastbound to Chicago over route 1, and the authority to be granted herein must be limited accordingly. [Italics supplied.]

It is clear that applicant has undertaken to transport only freight forwarder merchandise, as described in the report, and there is no evidence which would support a finding that it has the right under the "grandfather" clause to transport merchandise other than that just specified.

Applicant conducted its business as a contract carrier and as such did not hold itself out to serve the general public; the record shows that in line with this policy it confined its holding out and its services to freight forwarder traffic.

The basic and essential findings of the Commission in the instant proceedings plainly show that there was neither a holding out nor actual operations for the general public.

In *Sprout & Davis, Inc.*, 9 M. C. C. 679, the Commission said, "Applicant may have held itself out to serve points other than those described, even going so far as to make a plan, as a result of tests, to serve a more extensive area, yet, if there is no evidence of operation consistent with such holding out, there is not a bona fide operation."

Section 208 (a) specifying "terms and conditions of certificate" states, among other things, that any certificate issued under Section 206 "shall specify the service to be rendered." This 460 imposes upon the Commission the obligation of specifying in the certificate the various terms and conditions, including the type of service to be rendered. This being a "grandfather" application filed under the provisions of Section 206 (a), the service which should be authorized in the certificate is that service which applicant was rendering on the critical date. The Commission through failure to specify the service to be rendered (i. e., the continuance of the service being rendered on the "grandfather" date) would then create a transportation service not actually in existence on the "grandfather" date, because, stated otherwise, we must look to the applicant's "holding out" on the critical date. The Commission has found that applicant's entire operations, so far as shown by this record, have been for the Universal Carloading and Distributing Company.

It is therefore obvious that applicant's "holding out" goes entirely to a particular type of service falling within a particular class commonly known as "freight forwarders."

A certificate constitutes the carrier's authority to do business and the terms and conditions of the certificate as authorized in Section 208 (a), fix the limitation of the services to be rendered.

These terms may range from very limited to extensive operations. We submit that it was the legislative intent to vest in the Commission power to determine and specify in the certificate, by the use of adequate language, the extent of the operations in which the carrier may engage.

The Commission may specify the terms by designating the routes, the territories, and the commodities. The Commission may select the language and method of specification and
461 the most convenient way to do so, and as in this particular case, the limitation may go to a class or classes of the general public.

It cannot be contended that a specification of the service to be rendered as sought by this intervenor will in any way prohibit applicant from continuing to render the identical service which it was rendering on the critical date. It cannot be stated that the applicant, having voluntarily limited its "holding out," can be injured by any requirement which maintains his status quo as of the "grandfather" date.

We submit that the situation is comparable with that of a common carrier who on the "grandfather" date had confined his services to those of transportation of household goods. Certainly, the Commission has the power to limit certificates in such cases to that class of the public which ships household goods; likewise, haulers of petroleum products who have voluntarily limited their services to that class of the public which ships petroleum products.

If common carriers hauling exclusively forwarder merchandise or household goods or petroleum products are to be given unlimited rights to haul general commodities, then those carriers which on the "grandfather" date did not so limit themselves, will be confronted with competition that did not exist on the "grandfather" date.

The Act provides that pending the determination of a "grandfather" application, the continuance of such operation shall be lawful. In the instant proceeding "such operation" was that of the transportation of forwarder merchandise. During pendency
462 of the proceeding, the applicant may not lawfully expand such operations and certainly a "grandfather" certificate does not authorize extension of operations or the invasion of a field not occupied on the critical date.

Wherefore, intervenor respectfully requests that the authority granted to applicant be restricted to traffic, which is, at the time of transportation by applicant, in the primary custody of and moving on bills of lading of freight forwarders as defined in Section 402 (a) (5) of Part IV of the Interstate Commerce Act.

Respectfully submitted:
Regular Common Carrier Conference of the American Trucking
Associations, Inc.

R. J. McBRIDE,
J. MANLEY HEAD,
Attorneys for Intervenor.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing by first-class mail a copy thereof properly addressed to each party.

Dated at Washington this 13th day of January, 1943.

ROBERT J. McBRIDE.

463 *Defendant Commissioner's Exhibit 5*

Before the Interstate Commerce Commission

Docket Nos. MC-3339 and MC-3340

GLOBE CARTAGE COMPANY, INC.—COMMON CARRIER APPLICATION

Reply to petitions for leave to intervene and for reconsideration of the regular Common Carrier Conference of the American Trucking Associations, Inc.

Jan. 21, 1943

464 Comes now Globe Cartage Company, Inc., and, in reply to the above-mentioned petitions, respectfully request that they be denied.

I

PETITION FOR LEAVE TO INTERVENE

The petition for leave to intervene should be denied for the reason that it wholly fails to set forth any reason whatever for the failure of the petitioner to take steps to become a party to these proceedings before this late date, when even the time to file a petition for reconsideration has expired.

Furthermore, the petition on its face shows that the petitioner is not the sort of interested party whose property rights could be affected by the order in this matter. In discussing its interest, petitioner states "but such interest is general * * *"

Under the circumstances, petitioner sets forth no persuasive reason for the granting of the Petition for Leave to Intervene.

II

PETITION FOR RECONSIDERATION

Of course, if the Petition for Leave to Intervene be denied, then the Petition for Reconsideration will necessarily not be considered by this Commission.

Even if it were considered, it would avail the petitioner nothing.

All the arguments set forth in the Petition for Reconsideration have been advanced in previous petitions for reconsideration heretofore filed. They are: "Petition for Reconsideration and for Oral Argument of Protestants Cleveland, Columbus & Cincinnati Highway, Inc.; Motor Express, Inc.; and Motor Express, Inc., of Indiana"; "Petition of Protestants, Pennsylvania Truck Lines, Inc., Cleveland and Buffalo Transit, Alko Express Lines, Suburban Motor Freight, Inc., Union Transfer Affiliated and Buffalo Storage and Cartage Company, and Petition of Railroad Protestants in Central Freight Association and Other Territory."

Replies were filed to each of the petitions filed by the three named protestants above.

So that the record will not be unduly burdened, references is hereby made to said replies as though they were incorporated herein. A glance at said replies will make it evident that reconsideration is not warranted in this case.

Suffice it to say that, in addition to the weaknesses inherent in the petitions of the other protestants, the instant petition suffers from the confusion of the petitioner, since it is obvious that petitioner does not recognize the distinction between classes of commodities, on the one hand, and classes of shippers, on the other.

It may be proper for the Commission to limit the authority of a common carrier to a class or classes of commodities. It is not proper to limit a common carrier to a class or classes of shippers.

To employ the device suggested by petitioner would be to circumvent the clear terms of the statute and render the provision defining a common carrier as a person which holds itself out "to the general public" without meaning.

Wherefore, it is respectfully prayed that the said Petition For Leave To Intervene and Petition For Reconsideration be denied.

Respectfully submitted,

JACOB WEISS, *Attorney for Applicant.*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record, or their counsel, by mailing a copy thereof, properly addressed, postage paid.

Dated at Indianapolis, Indiana, this 19th day of January 1943.

JACOB WEISS.

467 *Defendant Commission's Exhibit 6*

Before the Interstate Commerce Commission

Docket No. MC-3339 (MC-3340) Now—Docket No. MC-25567,
Sub No. 8

In the Matter of the Application of HANCOCK TRUCK LINES, INC.,* SUCCESSOR TO GLOBE CARTAGE COMPANY, INC., UNDER THE "GRANDFATHER CLAUSE" OF PART II, OF THE INTERSTATE COMMERCE ACT.

Petition for reconsideration in behalf of Hancock Truck Lines, Inc., and brief in support thereof

Nov. 1, 1943

470 Comes, now, applicant, Hancock Truck Lines, Inc.,* successor to Globe Cartage Company, Inc., petitioner herein, and respectfully requests reconsideration by the Honorable, The Interstate Commerce Commission, of its Report and Order decided August 4, 1943, in the above captioned Docket, and Oral Argument in connection therewith. Applicant requests said Reconsideration in the following respects only,¹ and for the following reasons:

471 The Commission erred, in denying the grant of the use of all of the operating routes to applicant, and, in denying applicant the right to serve all of the points and places as applied for in its "Grandfather" application and, by granting only a portion of such applied for operating routes, points and places.

¹ Additional to those points and places authorized; applicant requests authority to serve all points and places applied for over all the routes as applied for in its "Grandfather" application.

*The Common Carrier operating rights of Globe Cartage Company, Inc., were by Order of Division 4, under date of May 16, 1942, in MC-F-1743, transferred to Hancock Truck Lines, Inc.

**It is necessary to show Docket No. MC-3340 in order that the Record be clear and understood. The main Record on hearing was made in Docket No. MC-3340, which record (MC-3340) on hearing in Docket No. MC-3339 was incorporated in and made a part of MC-3339 (see transcript in Docket No. MC-3339, pp. 6 through 29, inclusive).

PERTINENT BACKGROUND AND STATEMENT OF APPLICANT'S POSITION

NOTE.—Whenever, hereinbelow, Transcript references are made, these will be indicated as follows: (Tr. p. —), and, unless specifically noted otherwise, the page numbers in such references are to the Transcript of the Record in Docket No. MC-3340, which Record as previously indicated by note ** supra, was incorporated in and made a part of the Record in Docket No. MC-3339.

This proceeding involves the application of Globe Cartage Company, Inc., under the "Grandfather Clause" to which Hancock Truck Lines, Inc., succeeded by Order of Division 4, under date of May 16, 1942, in MC-F-1743, authorizing the acquisition by Hancock Truck Lines, Inc., hereinafter referred to as "Applicant" of all of the common carrier operating rights of Globe Cartage Company, Inc.

Hearing upon said application was held on November 6 and 7, 1939, at Toledo, Ohio.

Under date of August 17, 1940, a proposed report and order was recommended by an Examiner, to which Applicant and some protestants took exception. This Report and Order recommended that Applicant be authorized as a common carrier of commodities generally for the general public.

Under date of October 7, 1942, Division 5, entered and published its Report and Order. Applicant did not (for reasons set forth hereinbelow), file any petitions or motions in objection to this Report and Order of Division 5. Certain of the protestants and intervenors filed petitions for reconsideration which was granted by the full Commission in its Order of August 4, 1943.

The Order of the full Commission (August 4, 1943) on such Reconsideration incorporated its Report of the same date, and in substance reversed or modified drastically the Report and Order of Division 5, which had determined Applicant to be (under its "Grandfather" rights) a Common Carrier of general commodities for the General Public without restriction except, only as to the points and places to be served and the routes to be used in serving such named points.

Applicant did not file a petition for reconsideration of the Order and Report of Division 5, for the following reasons:

Prior to the effective date (and within the time) Applicant had prepared and was about to file such a petition when Applicant learned that certain protestants had filed or were about to file petitions for reconsideration. Applicant considered, upon reading the Petitions of the protestants, that it had sufficient on its hands to combat the prayers of such protestant petitions and that to inject a complaint against the limitation of points, places and

routes by Division 5, was, at the time, and, under those circumstances imprudent, and would bring too many issues for determination by the full Commission.

Applicant then decided (when it read protestants' prayers, together with the concurring opinion of Commissioner Rogers to the Division 5 Report) that at least for that proceeding it were best to fight for survival and forego some of its rights that it might live and continue in business, even though its ability to do business might, as a result, be curtailed.

Applicant chose rather to fight for what it then considered its life. To save its life, it was willing to suffer a dismemberment of some of its limbs.

473 Now the situation has changed. A new Report and a new Order has been promulgated.

In view of his new Report and Order, limiting our activities as a carrier to the handling of freight forwarder business only, we feel justified that the circumstances warrant now fighting for the saving of our limbs (all of the points, places and routes as applied for) as these now, under the changed circumstances, are our very life.

We do not challenge, nor do we complain against, the restriction to serve only freight forwarders. We give up our claims to serve others, painful as this limitation is.

We do challenge the situation whereby we may not serve all of the points and places via the routes that we did for freight forwarders during the "Grandfather" period and continuously since. This painful prospect should be eliminated. Our situation should be relieved. We should be allowed to serve each and every point and place applied for over all of the routes set forth in our application and as proven before the District Supervisor and before the Examiner at the hearing in this Docket.

ARGUMENT

At the outset, in view of the final finding of our status by the full Commission, we understand the law to be and the question to be determined in this proceeding:

Whether under the circumstances we are entitled to the right to serve all of the claimed points and places over the routes as applied for, depends on our "holding out" during the "Grandfather" period and continuously since—coupled, and fixed (or defined and modified) by what we actually did as a "Common Carrier in the transportation of commodities which were at the time moving on bills of lading of freight forwarder."

Stated another way: If now, in 1943, the determination is that on June 1, 1935, and continuously since, we were "Com-

474 mon Carriers transporting commodities which were moving on bills of lading of freight forwarders" then the measure of what we are entitled to receive by way of operating authority is: Did we as a carrier accept and transport all of the business that was made available to us by freight forwarders at the points and places claimed by us and did we transport such traffic over the routes as claimed during the critical period?

We say we did, and that we have proven that we did.

At every point and place claimed, our trucks were made available for transportation at all times. The delineated analysis of the proof in the Division 5 Report of August 4, 1943, indicates this beyond doubt. Point by point, city by city, that Report, beginning with the last paragraph on the bottom of sheet 5, thereof, and continuing through the third paragraph on sheet 9, proclaims loudly that, measured——by what freight forwarders made available for transportation——we transported. This, notwithstanding freight forwarders did not always maintain a flow of traffic for us to transport at each point or between each point every day, or every week, or even every month.

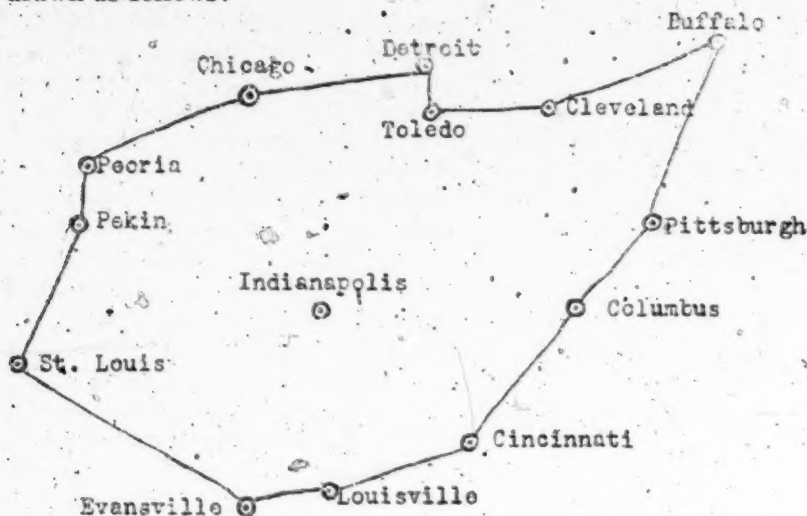
When they did have traffic for us to transport even with breaks in between of half a year or even a year, we were "Johnny on the spot" and we carried out our burden and we did transport. According to Our Holding Out.

It is in this light that our proof must be assayed. Our assumption during the "Grandfather" period was to transport for freight forwarders. That such traffic was not always available; or that freight forwarders did not, for reasons of their own, utilize our facilities as a motor carrier, does not alter the fact that our proof, as made available to the Commission, indicates clearly that when freight forwarders sought to utilize the service which we offered by way of carriage by motor vehicle, we always transported their traffic. We never failed! And this even though very

475 often we had to deadhead our equipment to another city where such traffic was available; and even though on many an occasion our equipment was tied up in a given place for days on end until a load of traffic was made available to us.

Applicant, to protect the situation whereby it was always ready to perform that which it held itself out to do, went to the trouble of having ready State Operating certificates and permits way and beyond the needs (as measured by the grant of authority by Division 5) of its everyday service. Applicant did this to be in a position TO DO what it held itself out to do. The operating authorities from the several states were set out in the "Grandfather" application and are referred to in the Record at the Hearing. (Tr. pp. 363, 364.)

It must be remembered that during the critical period, our position as a carrier for freight forwarder shippers was in flux. That is to say: While we did at certain places maintain a staff and trucks to satisfy sustained operations for steady flows of freight forwarder traffic, yet, our business was such that whenever it was advantageous to the freight forwarder, we were called upon to service other points not as continuous in flow of traffic as other places. And, we did service such traffic, by transporting the same by motor vehicle, if the same originated at a point and was destined to a point within the territory in which we held ourselves out to transport with Indianapolis, Indiana as a focal point. This territory in which we held ourselves out and did actually operate and transport freight forwarder traffic is described in boundaries as follows: Buffalo, N. Y. and Pittsburgh, Pa., in the east; Cleveland and Toledo, Ohio, Detroit, Mich. and 476 Chicago, Ill. on the north; St. Louis, Mo., Pekin and Peoria, Ill. on the west; and Evansville, Ind., Louisville, Ky. and Cincinnati, Ohio, on the south, with service to any and every point and place (over the most convenient routes) within the territory contained within a continuous line drawn on a map from Buffalo, N. Y. through Pittsburgh, Pa., through Cincinnati, Ohio, Louisville, Ky., and Evansville, Ind. through St. Louis, Mo., through Pekin, Peoria and Chicago, Ill. and Detroit, Mich., Toledo, and Cleveland, Ohio, to Buffalo, N. Y., inartistically drawn as follows:



This we actually did. With more or less regularity, depending upon the evenness of available traffic, we served between (to and from) every city contained on and within the territory of the map lines as crudely drawn above.

True, our formal documentary proof does not bear out this assertion in every particular. This lack in formal documentary proof is due to several reasons, amongst which are these:

1. The object of your Applicant at the hearing was to make only a representative showing and for this reason, the exhibits as prepared were intended only to diagram the operations by representative shipments (Tr. pp. 61, 115, 120, 121, and 234).

2. The original books of entry and records of Applicant were brought into the hearing room and were made available for protestors and the Examiner (Tr. pp. 59, 60, 114, 116, 117, 118, 120, 208, 212, 215, 227, 228, 272, 273, 279, and 339).

3. Applicant truly was bewildered (as were many others until the Order of the Commission of August 4, 1943) as to what kind or type of a carrier it was; and what sort of proof to prepare to help the Commission to determine its status (Tr. Docket No. MC-3339, pp. 6 through 29, inclusive) and most important.

4. Prior to the time that any suggestion of the necessity for a formal hearing in this Docket, Mr. Luther Snodgrass, then District Supervisor at Indianapolis for the Bureau of Motor Carriers of the Commission, had spent weeks at Applicant's main office at Indianapolis, Indiana, going over the documents and other records of Applicant to help him in his informal investigation of Applicant's "Grandfather" application. In the course of his investigation, he pulled out and laid aside a great volume of documents and these were all put together into one large pile. The fates and the weather were against us. These produced one of the most devastating and ruinous floods, early in the year 1937.

The flooded White River, which flowed only a very short distance from Applicant's office, caused the sewer in that part of Indianapolis to back up and inundate this pile of documents (amongst other personal property and records) so neatly laid aside by this District Supervisor and which was so vitally important to us as proof at the formal hearing later determined to be necessary by the Commission two years later in 1939. The health authorities required us to haul this material away to be destroyed, which we did (Tr. pp. 56-58, 192, 201, 345). Thus, this valuable documentary aid to our proof was not available at the hearing. It may well be that the substance of its contents can be found in the Commission's confidential files or amongst the records of the local Supervisor at the office of the Bureau of Motor Carriers at Indianapolis.

5. The Record is replete with oral testimony from four witnesses, (drivers, dispatchers, road supervisor, and general manager) backed up by Applicant's original books of entry and

records made available at the hearing (in addition to the map and route breakdown: Exhibits 30 and 31), and closely examined by all of the many counsel appearing for the protestants, showing conclusively that operations were conducted by Applicant way and beyond what was presented in documentary form, to and from and between all points claimed and applied for. (Tr. pp. 78, 113, 115, 133, 135, 140, 142, 147, 155, 156, 160, 168, 177, 196, 198, 202, 203, 204, 225, 228, 229, and 354.) See testimony of Witnesses Kohout, Wilson, Branham and Wilson (Tr. pp. 23-28, 129, 148, 186, 218, 219, and 345).

479 See: Niagara Freight Lines, 6 M. C. C. 585, 587; Durant Transit Company, 7 M. C. C. 264, 265, 266; John Richards, 27 M. C. C. 489, 492, 494.

In addition to Exhibits numbered 30 (map showing operations and routes) and 31 (route breakdowns), Applicant at the hearing introduced thirty (30) separately arranged Exhibits (1-29, 33) showing thereon (in abstract form) actual shipments handled by Applicant during the critical period (supported at the hearing by shipping documents and "original books of entry and records" covering each movement), which Exhibits numbered as set forth hereinbelow, between the points and places indicated, must be read and understood as being INCOMPLETE and as being merely Representative** of that which Applicant did and held itself out to do during the critical period:

See Exhibits:

1. Between Chicago, Illinois and St. Louis, Missouri.
2. Between St. Louis, Missouri and Cincinnati, Ohio.
3. Between Louisville, Kentucky and Cincinnati, Ohio.
4. Between Cincinnati, Ohio and Indianapolis, Indiana.
5. Between Indianapolis, Indiana and Cleveland, Ohio.
6. Between St. Louis, Missouri and Dayton, Ohio.
7. Between Louisville, Kentucky and Indianapolis, Indiana.
8. Between St. Louis, Missouri and Louisville, Kentucky.
9. Between St. Louis, Missouri and Cleveland, Ohio.
10. Between St. Louis, Missouri and Pittsburgh, Pa.
11. Between Indianapolis, Indiana and St. Louis, Missouri.
12. Between Akron, Ohio and St. Louis, Missouri.
13. Between Springfield, Ohio and St. Louis, Missouri.
14. Between Indianapolis, Indiana and Dayton, Ohio.

*It must be remembered that the original books of entry and other records of Applicant were in the Hearing Room and that these contained proof of additional tens of thousands of shipments handled by Applicant during the critical period. Further, it must be understood that the protestants fine-tooth-combed these books and records. The Examiner and Division 5 apparently ignored the contents of these in their respective determinations.

**Applicant did not prepare more detailed Exhibits because of the shortness of time allowed and because it believed that a showing Representative of its activities was all that was desired by the Commission.

15. Between Indianapolis, Indiana and Toledo, Ohio.
16. Between Indianapolis, Indiana and Detroit, Michigan.
17. Between Pittsburgh, Pa., and Indianapolis, Indiana.
18. Between Louisville, Kentucky and Cleveland, Ohio.
19. Between Louisville, Kentucky and Pittsburgh, Pa.
- 480 20. Between Louisville, Kentucky and Chicago, Illinois.
21. Between Indianapolis, Indiana and Chicago, Illinois.
22. Between Chicago, Illinois and Cincinnati, Ohio.
23. Between Chicago, Illinois and Pittsburgh, Pa.
24. Between Detroit, Michigan and Louisville, Kentucky.
25. Between Dayton, Ohio and Springfield, Ohio.
26. Between Pittsburgh, Pa. and Columbus, Ohio.
27. Between Cleveland, Ohio and Pittsburgh, Pa.
28. Between Columbus, Ohio and St. Louis, Missouri.
29. Between Cleveland, Ohio and Cincinnati, Ohio.
33. Between Buffalo, New York and St. Louis, Missouri.

A careful examination of these Exhibits 1-29, 33, will show clearly that, in addition to the points and places outlined above, these Exhibits showed operations between other places, intermediate, off-route, and ultimate.

Much interrogation by way of direct, cross, redirect and recross examination by Counsel, as well as by the Examiner, was made of each of the witnesses to determine whether each of the routes and each of the points as applied for had actually (on June 1, 1935, and continuously thereafter) been utilized and served. Invariably, the Record will show beyond doubt that EACH point was served and EACH route utilized in such service. (See Transcript, Witnesses: Kohout, Tr. pp. 13, 112, 210, 226, 346, 348, 361, 364, 367; Wilson, 129, 136; Branham, 148, 157, 171, 186; Morris, 186, 189, 192.) The Transcript references at this place are directed to the portions of the Transcript where direct, redirect, cross and recross examination (and the questions of the Examiner) begin. These Transcript page references are so here arranged rather than particular page references for the reason that a full reading of the uncontradicted and unchallenged testimony is necessary (and will easily convince the wary) for an understanding of the clear uncontraverted fact that (so far as the Record goes) Applicant did operate, and should be granted authority for the future, 481 over each and every route, as claimed and applied for, in servicing each and every point and place as claimed and applied for.

We think the determinations of the Commission on different occasions are clear that in the appraisal of rights and routes claimed under a "Grandfather" application authority will be

granted upon a REPRESENTATIVE showing aided by oral testimony.*

Union Transfer Co., 19 M. C. C. 569, 661, 662.

From the earliest days, it has been clear that a showing of service to principal points is sufficient to warrant the grant of intermediate points on oral testimony: Midland Truck Lines, Inc., 3 M. C. C. 352, 554; Nevitte Com. Car. Application, 4 M. C. C. 298, 299-300; Niagara Freight Lines, 6 M. C. C. 585, 587; Mercury Motors, Inc., 7 M. C. C. 557, 558-559; Durant Transit Company, 7 M. C. C. 264, 265, 266.

While it is true that the Commission does not weigh too heavily an asserted "holding out"—there are special cases (and we believe the instant situation is a "Special case") where the facts and circumstances warrant a modification (relaxation) of the usual determination. In the case of "Warren Trucking Company (No. MC-9914, Common Carrier Application) 3 F. C. C. —," this was clearly established. We quote at length from that decision:

482 "As protestants point out, we have repeatedly refused to attach much weight in a 'grandfather' proceeding to a mere holding out without some evidence of actual service consistent therewith. In instances such as the one here considered, however, where the holding out for the return movement is so definitely and obviously a part of the holding out for the out-bound movement, we feel warranted in considering the holding out for the return movement as being modified not by the actual service performed on the return movement only, but rather by the service as a whole, including the out-bound movement. Such considerations, of course, are not applicable in every case but appear to be appropriate here where the great bulk of applicant's service has been and will be performed for a single manufacturer [freight forwarder] who has relied upon applicant almost exclusively for a complete truck service. We conclude, therefore, that applicant has established 'grandfather' rights for the return movement of materials used in the manufacture of new furniture in connection with its outbound movement of the finished products."

*Although Division 5, in its Report of October 7, 1942, and the full Commission in the Report herein complained, gave no weight to the oral testimony showing operations for shippers other than the Universal Carloading and Distributing Corporation, the Record on the Hearing, repeatedly, throughout its 379 pages, time and again discloses testimony (oral and not documentary except Exhibits 30 and 31) showing operations for at least twenty additional shippers. (Tr. pp. 49, 138, 193, 326, 327, 328 and 351.)

The object of Applicant, at this point, in pointing this out, is twofold: (1) Time and again points and places (not granted by Division 5) are mentioned (and uncontradicted in the Record) as having been served during all of the critical period (Tr. pp. 78, 113, 117, 133, 135, 140, 142, 147, 155, 156, 160, 168, 177, 196, 198, 202, 203, 204, 225, 228, 229, and 354); and (2) we deem this to have weight and probative value to emphasize Applicant's operations and their comprehensive coverage by actual operations to all points and places over all routes as applied for

*Bracketed words, thus [freight forwarder], are our insertion.

Likewise in a contract carrier case (which we believe is congruously analagous to our situation) a rule was stated which should be governing in the instant situation. We quote from the decision in the case of John R. Callahan (No. MC-47693, Contract Carrier Application) 3 F. C. C. —:

"This leaves in issue applicant's claim of a "grandfather" right to serve the remaining 15 destinations which he contractually undertook to serve, but did not actually serve, prior to the statutory date. The answer depends on whether the actual physical operation performed by applicant since prior to the statutory date has been consistent with, and, in a broad sense, coextensive with, the extent of his obligation under the contract. In other words, considering the 30 destinations named in the contract as a group comprising the territory served, the question arises whether the 15 destinations actually served are so located in that territory as to warrant the conclusion that applicant was rendering a good-faith service on July 1, 1935, to the entire group as a unit, and, if not, to what particular destinations or what part of the group he was giving such a service. *We do not require proof of actual operation to every point within a claimed territory but only proof of operation consistent with the applicant's undertaking or obligation under the contract.* In this connection, it must be noted that the opportunity for service and the frequency of service to particular points in a contract carrier case necessarily depends upon the volume and scope of the shipper's business which naturally

483 will fluctuate from time to time. As seen, applicant actually served 15 destinations in West Virginia, Virginia, and Maryland prior to July 1, 1935, and in the natural course of the shipper's business, he was called on to serve 15 additional destinations in these States subsequent to that date. This he did in fulfillment of his undertaking under his contract with the shipper. If we can say that applicant's actual operation to the 15 points prior to July 1, 1935, constituted a substantial and continuing service to the territory covered by the contract, or to the points named therein as a group and that his operation subsequent to July 1, 1935, was merely a continuation of service to additional points "within the territory" or group, then we should find that applicant was in bona fide operation on the statutory date to the territory covered by his contractual undertaking with the shipper." [Italics supplied.]

Applicant's operation must be determined upon the same basis as the Commission considered in the following cases:

John Richards, 27 M. C. C. 489.

Clarence Tarbet, 6 M. C. C. 325.

Gas City Transfer Company (MC-8540), decided Feb. 21, 1942.

Thomas Truck Co., Inc. (MC-4638), decided July 10, 1940.

LeCrone Transport Line, Inc., 30 M. C. C. 641.

Transamerican Freight Lines, Inc., 28 M. C. C. 493.

H. L. Anderson (MC-3127), decided Dec. 6, 1941.

In none of the above cases did the Commission assay the proof in a narrow application; rather, in each of the above cases the Commission understood that the documentary proof was merely a representative showing; that some points served indicated the right to serve other points—upon the basis of holding out backed up by some service. We are in like situation and our authority should not be too narrowly confined.

Published cases corroborative of Applicant's claims are numerous. We will not burden with further citation and quotation from decided cases. We assert our position is of virtue and 484 that a fair appraisal of the analysis of the Documentary proof introduced at the Hearing and as set out in the Report of Division 5, in this case, under date of October 7, 1942, should convince the Commission in the Reconsideration that Applicant, who is adjudged in 1943, to have been in 1935, and since, a carrier for freight forwarders only—should be granted the rights applied for (routes and points and places) on the basis of its Holding Out and the Actual Service performed by it in pursuance of its holding out.

In appraising this proof and in evaluating its weight, we pray, urgently and sincerely, that the Commission determine whether in an operation as far-flung in territory as is—and was—this operation, it is conceivable that a carrier would have to go to a dead-end city like Pittsburgh, or Cincinnati, or Louisville, or Chicago, or Detroit, or Buffalo, not to mention other cities within the territory served, like: Cleveland, Akron, Toledo, Dayton, Indianapolis, amongst others, without hope of getting a return load, or for a Load to cities or places other than those specifically (by very, very narrow construction) authorized by the Order of Division 5.

Too, in appraising the documentary proof, we pray and urgently request the Commission in this Reconsideration to give weight to the oral testimony (which we regard as proof) of Witnesses Kohout, Van Tassel, Wilson, Branham, and Morris, respectively. Kohout, the General Manager of Applicant, who was first a driver, divisional superintendent, and road supervisor; Van Tassel, the General Traffic Manager for the Universal Carloading and Distributing Company; Wilson, driver, terminal manager, road supervisor for Applicant; Branham, driver and terminal manager for Applicant; Morris, driver, all persons in a position to know and Describe Applicant's operations.

As urgently, and with all the sincerity that we can
 485 command, we pray, that in so appraising and evaluating of
 Applicant's proof in this Reconsideration, the Commission
 consider that Applicant held itself out to do and did that which
 was best suited for the freight forwarder. When, (for whatever
 reason) the freight forwarder failed to load our trucks at a given
 place, or at a given time, or even for a given period, there was
 very little that we could do about it. We either dead-headed to
 the closest place (within the territory) or waited until a load to
 another place (within the territory) was available to us, or we
 submitted to an arrangement where for a period we hauled to one
 place, dead-headed to another (hauled and dead-headed inter-
 mittently), until pay loads were available at freight forwarders
 need within the territory, bounded and described, *supra*, page 7,
 of this motion and brief.

For convenience, we set forth hereinbelow the analysis of the
 documentary proof only as contained in the Report of Division 5,
 under date of October 7, 1942:

NOTE.—It must be remembered in reading the hereinbelow por-
 tion of the Division 5 Report, that the Hearing was held in No-
 vember 1939, and all documentary proof, necessarily, had to bear
 an earlier date.

"Akron-St. Louis. The documentary evidence submitted dis-
 closes one shipment on May 28, 1935, from St. Louis to Akron,
 none from that date to May 18, 1936, and from the latter date to
 December 31, 1938, there were numerous shipments. No ship-
 ments are shown from December 31, 1938, to the date of the hear-
 ing in November 1939. It is apparent that if a service from St.
 Louis to Akron can be said to have existed on the statutory date,
 it was abandoned on December 31, 1938. With respect to service
 in the opposite direction, the documentary evidence shows that
 applicant has operated from Akron to St. Louis continuously
 since a date prior to June 1, 1935, and is entitled to continue that
 service. [Italics supplied.]

"Akron-Cleveland. On the claimed operation from Akron to
 Cleveland, there was shown only one shipment which moved Jan-
 uary 24, 1937. In the reverse direction, numerous shipments were
 made from March 8, 1934, to April 4, 1935, but the record does
 not show that there were any shipments after the latter date
 except for two in 1939, one on January 12, and the other on June
 12. The evidence is not sufficient to justify the granting of
 authority sought between Akron and Cleveland. [Italics sup-
 plied.]

486 "Akron-Chicago. There were shown four shipments
 only, from Chicago to Akron, three of those in No-
 vember 1936 and the other September 3, 1938. The first ship-

ment shown from Akron to Chicago was on April 8, 1936, with six others during 1936, five during 1937, numerous others during 1938, and eight during the first half of 1939. The evidence of operation between Chicago and Akron showing no service at all prior to June 1, 1935, is not sufficient to prove "grandfather" rights between those points over the routes claimed. [Italics supplied.]

"Akron-Buffalo. As to the claimed operation from Akron to Buffalo, N. Y., there were shown three shipments in 1938, two shipments in 1939, and in the reverse direction two only, in 1938, one on February 24 and the other on March 3. This showing is not sufficient to prove a "grandfather" operation between these points. [Italics supplied.]

"St. Louis-Springfield. There is no documentary evidence indicating any operation from St. Louis to Springfield, Ohio. The operation in the reverse direction from Springfield to St. Louis was instituted prior to June 1, 1935, and continued rather consistently until July 31, 1936. From the latter date to September 27, 1937, no service is shown. After September 27 there were nine shipments in 1937, 20 in 1938, and three in 1939, one on January 3, one on February 25, and the other on March 1. Most of the period in 1937 as to which there is no documentary evidence was after the flood that destroyed a portion of applicant's records. No explanation was made of the failure to show any shipments moved after March 1, 1939. Applicant has failed to establish an operation between St. Louis and Springfield, over the routes claimed. [Italics supplied.]

"Dayton-Indianapolis. No documentary evidence was submitted to show an operation from Dayton to Indianapolis. In the opposite direction there were shown two shipments in 1935; none in 1936; a substantial number in 1937; two in December 1938; and one on February 6, 1939. This showing suggests a virtual cessation of operation over this route and is not sufficient to establish the routes claimed between Indianapolis and Dayton. [Italics supplied.]

"Indianapolis-Toledo. The operation between Indianapolis and Toledo was instituted prior to June 1, 1935, but no service from Toledo to Indianapolis is shown after September 27, 1937, and none in the opposite direction after October 1, 1937. Applicant has failed to establish the rights sought between these points. [Italics supplied.]

"St. Louis-Toledo. The operation between St. Louis and Toledo was begun prior to the statutory date, but no service is shown from St. Louis to Toledo from September 11, 1935 to August 14, 1937; none in 1938; and only one shipment in 1939. No service was rendered from Toledo to St. Louis during 1937; there were

two shipments in 1938, and two in 1939. No operating rights have been established between these points over the routes claimed: [Italics supplied.]

"Indianapolis-Detroit. The record shows *three shipments in May 1934*, one in August, one in September, and one on November 15, 1934, but there is no documentary evidence of operation from Detroit to Indianapolis from November 15, 1934 to May 16, 1936. *Quite a volume of shipments continuously since the latter date are shown.* It thus appears that there was no operation on the statutory date. Even if consideration be given to the operation prior to November 1934 the cessation in such service for approximately 19 months must be considered an abandonment thereof. [Italics supplied.]

"With respect to service in the opposite direction, there were nine shipments during 1935, some of them prior to June 1, and considerably more during each of the subsequent years. The evidence submitted is deemed sufficient proof that *applicant has operated from Indianapolis to Detroit since prior to June 1, 1935.* [Italics supplied.]

"Indianapolis-Pittsburgh. *Operation from Pittsburgh, Pa. to Indianapolis was instituted on May 3, 1935, and there was a regular movement until June 17, 1938, at which time the service in that direction appears to have been abandoned, as there is no evidence of operation since that time. However, the evidence presents a different picture with respect to service from Indianapolis to Pittsburgh. It was begun in May 1935 and has been continuous since.* [Italics supplied.]

"Louisville-Cleveland. The record shows numerous shipments from Louisville to Cleveland from May 1, 1935, to December 31, 1935, two in January, one in February, one on April 8, 1937, and none from the latter date to February 10, 1939, a cessation of operation for 22 months. *Numerous shipments were made from Cleveland to Louisville from May 1, 1935 to November 30, 1937, but the record does not show any shipments after the latter date except one on August 14, 1939.* No rights between these points can properly be granted on the present record. [Italics supplied.]

"Louisville-Pittsburgh. The documentary evidence submitted, which need not be reviewed, shows that applicant is entitled to continue the operations between Louisville and Pittsburgh.

"Pittsburgh-Cincinnati. *The operation between Pittsburgh and Cincinnati was instituted on July 14, 1936, in one direction, and in the opposite direction on July 15, 1936, or more than 13 months after the statutory date.* The evidence will not support a finding that applicant is entitled to authority to operate between Pittsburgh and Cincinnati. [Italics supplied.]

488 "Louisville-Chicago; Indianapolis-Chicago; Cincinnati-Chicago. No exceptions were filed to that portion of the examiner's recommended order which proposed a grant of operating authority between these points. They need not be discussed in detail. Authority will be granted between these points.

"Chicago-Pittsburgh. According to the documentary evidence submitted in support of the operation from Pittsburgh to Chicago, *the service commenced prior to June 1, 1935, was abandoned from April 18, 1936 to September 2, 1937, both inclusive. Service in the opposite direction has been continuous since prior to the statutory date. Applicant is entitled to continue operation from Chicago to Pittsburgh.* [Italics supplied.]

"Detroit-Louisville. There is also ample proof which need not be described in detail that applicant is entitled to continue operating between Detroit and Louisville.

"Dayton-Springfield. The evidence shows conclusively that on April 29, 1938, applicant abandoned *an operation begun prior to June 1, 1935, from Dayton to Springfield. Service in the reverse direction was discontinued on April 1, 1938.* Applicant has failed to establish a right to operate between these points. [Italics supplied.]

"Columbus-Pittsburgh. There is no documentary evidence of operation from Columbus to Pittsburgh. In the reverse direction there were *seven shipments in 1935; three shipments in 1936; three shipments in 1937; none in 1938, and only one in 1939.* Having in mind the importance of these points, the meager service shown is not sufficient to warrant a finding of a bona fide operation on and continuously since June 1, 1935. [Italics supplied.]

"Cleveland-Pittsburgh. No documentary proof was offered with respect to service from Pittsburgh to Cleveland. *There is satisfactory proof, however, with respect to the operation from Cleveland to Pittsburgh.* [Italics supplied.]

"Columbus-St. Louis. Evidence of operation from Columbus to St. Louis shows *one shipment on March 2, 1935, none in 1936, nine in 1937, and 17 in 1938, but no evidence was submitted to show an operation after December 16, 1938. The record does not show any evidence of operation from St. Louis to Columbus. On the present record no authority can properly be granted between these points.* [Italics supplied.]

"Cleveland-Cincinnati. The evidence shows *two shipments in 1934 from Cleveland to Cincinnati, three in October and November 1935, 10 in 1936, two in 1937, five in 1938, and one on January 28, 1939.* No evidence was submitted to show an operation in the reverse direction. Applicant, however, has not sub-

489 mitted sufficient proof to show continuous operation between these points over the routes claimed. [Italics supplied.]

"Buffalo-Pittsburgh." Applicant did not submit any documentary evidence in support of a claimed route between Buffalo and Pittsburgh and it does not appear to be entitled to authority to operate between these points over the route described in appendix A. *Pittsburgh Flood (Tr. p. 339); Examiners check, destruction of Records (Tr. pp. 23-28, 129, 148, 186, 218, 219 and 345); see also; Buffalo-St. Louis, *infra*.

"Buffalo-St. Louis." The first operation between Buffalo and St. Louis shown by any documentary evidence was on June 27, 1936, and there has been a continuous operation since that time. However, the general traffic manager of Universal who has been with the company since December 1, 1918, was positive that service has been rendered by applicant between Buffalo and St. Louis since September 1921, at which time Universal opened its office in East St. Louis. Daily service is provided between these points. The operation will be authorized between these points.

"Buffalo-Chicago." No documentary evidence was submitted in support of a claimed operation over specified routes between Buffalo and Chicago, consequently no authority can be granted between these points. See note *Buffalo-Pittsburgh, *Supra*.

"Buffalo-Indianapolis." (Both parol and documentary evidence show that the operation between Buffalo and Indianapolis also was commenced in September 1934. No interruption appears and the operation will be authorized.)

"Louisville-Buffalo." There was no documentary evidence nor definite and specific oral testimony to support the claimed operation between Louisville and Buffalo. No authority can be granted to operate between these points." See note *Buffalo-Pittsburgh, *supra*.

Between the floods at Pittsburgh in 1936, at Cincinnati in 1936 and 1937, and at Indianapolis in 1937, with the resultant destruction of records, together with the inadequate provisions for preservation of records (a common characteristic of all carriers, no less Applicant in the early years) much could not be proven. For example: Very few shipping documents were available to show the operations in and to and from Buffalo and other points. Yet everybody connected with the operation (Globe Employees and Universal employees) knew that almost daily operations were conducted between practically all the cities served and

490 Buffalo. This same condition prevailed with Detroit, Mich., Pittsburgh and Erie, Pa., Cleveland, Akron, Toledo, Cincinnati, Dayton, Columbus and Springfield, Ohio; Indianapolis (the main operating point), Muncie, Lawrenceburg and

Evansville, Indiana; Pekin, Peoria, Alton, East St. Louis, and Chicago, Illinois; and Louisville, Ky.

We believe that no question can exist that operations actually were conducted by Applicant between all points and places, over all the routes within the territory, as applied for.

For emphasis and explanation: We have bounded and described, and throughout this document, have adverted to a territory. Actually this was a territorial operation (Tr. pp. 194; 195) with operation between all the points (ultimate, off-route and intermediate) within the territory, especially between: Indianapolis, Indiana; Muncie, Indiana; Lawrenceburg, Indiana; Evansville, Indiana; Chicago, Illinois; Alton, Illinois; Peoria, Illinois; Pekin, Illinois; E. St. Louis, Illinois; St. Louis, Missouri; Akron, Ohio; Cleveland, Ohio; Toledo, Ohio; Columbus, Ohio; Springfield, Ohio; Dayton, Ohio; Cincinnati, Ohio; Pittsburgh, Pennsylvania; Erie, Pennsylvania; Detroit, Michigan; Louisville, Kentucky; Buffalo, New York.

This was not a to and from operation, except, only, as 491 freight forwarder traffic, for a time only, made it so. It was always a between operation serving between all of the points named above.

Our view is that this operation could very well be granted as a territorial operation. We believe that the Commission could very well and consistently determine that Applicant's operation on June 1, 1935 and since, was and is that of a Common Carrier, territorial in scope, limited to the transportation of general commodities (except commodities in bulk and those of unusual length, height or weight) which are at the time moving on bills of lading of freight forwarders.

To maintain our very life as a carrier, as a minimum, in view of the curtailment and limitation to the hauling for freight forwarders only, we believe that we are entitled to no less than the right to use all convenient routes (as set forth in our Exhibits 30 and 31, at the hearing) in serving between each and every one of the following cities: Indianapolis, Muncie, Lawrenceburg and Evansville, Indiana; Chicago, Alton, Peoria, Pekin and East St. Louis, Illinois; St. Louis, Missouri; Akron, Cleveland, Toledo, Columbus, Springfield, Dayton and Cincinnati, Ohio; Pittsburgh and Erie, Pa.; Detroit, Michigan; Louisville, Kentucky and Buffalo, New York.

Wherefore the premises considered:

Hancock Truck Lines, Inc. Applicant by succession (Dockets No. MC-E-1743 and MC-25567, Sub. No. 8) to the "Grandfather" rights of Globe Cartage Company, Inc. (Docket No. MC-3339), respectfully prays the Honorable, the Interstate Commerce Commission to reconsider so much of its Report and Order of August 4,

1943, as does not grant the right in Applicant to serve all the points and places as applied for, using all of the routes in the service of all such points and places as applied for, in Applicant's "Grandfather" application (on Form B. M. C. 1), and, upon reconsideration, Applicant further prays that the Honorable, the Interstate Commerce Commission authorize issue and grant unto Applicant a Certificate of Convenience and Necessity as a Common Carrier of general commodities (except commodities in bulk and those of unusual length, height or weight) which are at the time moving on bills of lading of freight forwarders, and authorizing service, between all of the points and places as applied for over all of the routes as applied for as described and set forth in the "Grandfather" application (Form B. M. C. 1) seasonably filed and docketed as MC-3339 (now MC-25567, Sub. No. 8), and for all other and proper relief in the premises.

Respectfully submitted.

HANCOCK TRUCK LINES, INC.,

By JACOB WEISS,

Jacob Weiss, *Its Counsel*,

512 Insurance Building, 8 East Market Street,

Indianapolis, Indiana.

Dated at Indianapolis, Indiana, October 29, 1943.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by mailing a copy thereof properly addressed to each.

Dated at Indianapolis, Indiana, this 29th day of October 1943.

JACOB WEISS.

Jacob Weiss.

493 [Clerk's certificate to foregoing transcript omitted in printing.]

494 In the Supreme Court of the United States

October Term, 1944.

No. 448

Statement of points to be relied upon and designation of parts of record to be printed

Filed Oct. 2, 1944

Appellants, United States of America and Interstate Commerce Commission, pursuant to Rule 13, paragraph 9, state that the

points on which they intend to rely are all those set forth in their assignment of errors heretofore filed, and designate for printing as necessary to the consideration of the case the entire record as certified and transmitted by the Clerk of the District Court.

CHARLES FAHY,

Charles Fahy,

Solicitor General.

WENDELL BERGE,

per R. L. P.

Wendell Berge,

Assistant Attorney General.

EDWARD DUMBAULD,

per R. L. P.

Edward Dumbauld,

Special Assistant to the Attorney General.

DANIEL W. KNOWLTON,

Daniel W. Knowlton,

Chief Counsel, Interstate Commerce Commission.

NELSON THOMAS,

Nelson Thomas,

Attorney, Interstate Commerce Commission.

495 Receipt of copy of the foregoing statement of points to be relied upon and designation of parts of record to be printed acknowledged this — day of —, 1944.

JACOB WEISS,

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ALBERT WARD,

8 East Market St., No. 318,

FERDINAND BORN,

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Ill of Indianapolis, Indiana,

Attorneys for Appellee, Hancock Truck Lines, Inc.

[File endorsement omitted.]

496 In the Supreme Court of the United States

October Term, 1944

No. 449

Statement of points to be relied upon and designation of parts of record to be printed

Filed Sept. 20, 1944

Appellant, Regular Common Carrier Conference of American Trucking Associations, Inc., herewith submits to the Clerk of the

Supreme Court of the United States its Statement of Points to be Relied Upon, and Designation of Parts of Record to be Printed, pursuant to the provisions of Paragraph 9 of Rule 13 of the Rules of the Supreme Court of the United States.

POINTS TO BE RELIED UPON

1. The facts of record before the Interstate Commerce Commission in the matter of the Application of Globe Cartage Company, Docket No. MC-3339 fully sustain the findings made and the order entered by the Interstate Commerce Commission in said matter, which said order is the subject of complaint in Plaintiff-Appellee's petition.

2. The findings and order of Division 4 of the Interstate Commerce Commission in Interstate Commerce Commission Docket No. MC-F-1743, being the acquisition matter wherein plaintiff acquired the operating rights of Globe Cartage Company were not conclusive and binding upon the Interstate Commerce Commission in its determination of the Globe Cartage operating rights, and such findings and order of the Interstate Commerce Commission in its Docket No. MC-F-1743 could not in law constitute a determination of the "grandfather rights" which plaintiff acquired by its purchase of Globe Cartage Company.

487 (a) Findings and orders of Division 4 of the Interstate Commerce Commission are entered pursuant to Section 5 of the Interstate Commerce Act and determine solely the question whether a transfer of operating rights is consistent with the public interest, whereas the determination of "grandfather rights" is made pursuant to the provisions of Section 206 (a) of the Interstate Commerce Act.

(b) Estoppel cannot be asserted as a defense against either the United States or the Interstate Commerce Commission.

3. The Interstate Commerce has the authority, pursuant to the provisions of Part II of the Interstate Commerce Act, to issue a Certificate of Public Convenience and Necessity imposing or placing thereon in a proper case restrictions that limit the carrier to the transportation of "general commodities which are at the time moving on bills of lading of freight forwarders."

(a) The placing of such limitation or restriction on the certificate in the instant case is not a denial of due process of law.

(b) Such restriction is not inconsistent with plaintiff's status as a common carrier.

(c) Plaintiff could not acquire by purchase any greater operating authority than its predecessor was entitled to.

4. The court below exceeded its jurisdiction in substituting its judgment for that of the Interstate Commerce Commission in its finding and order in that

(a) Said Court did not remand said matter to the Interstate Commerce Commission for further proceedings.

(b) Said Court made findings of fact and conclusions of law contrary to the record, made before the Interstate Commerce Commission.

PARTS OF THE RECORD TO BE PRINTED

1. Plaintiff's complaint, with Exhibits A, B, C, and D thereto.
2. Answer of defendant United States.
3. Answer of defendant Interstate Commerce Commission.
- 498 4. Plaintiff's reply to paragraph X of answer of defendant Interstate Commerce Commission.
5. Petition of Regular Common Carrier Conference of the American Trucking Associations, Inc., for leave to intervene and become a party defendant in the above-styled proceeding.
6. Order of April 8, 1944, allowing the above-mentioned intervention, the recording of the filing of plaintiff's reply to paragraph X of the answer of the Interstate Commerce Commission, and the hearing and submission of the case.
7. Proposed findings of fact and conclusions of law submitted by defendants United States and Interstate Commerce Commission (but refused and not given by the court).
8. Findings of fact and conclusions of law submitted by the plaintiff and given by the court.
9. Final decree of May 25, 1944.
10. All exhibits offered at the hearing by plaintiff and admitted in evidence by the court.
11. All exhibits offered by defendants and admitted in evidence by the court.
12. Petition of defendants United States and Interstate Commerce Commission for appeal and petition of intervening defendant, Regular Common Carrier Conference of American Trucking Associations, Inc. for appeal.
13. Assignment of errors filed by defendants United States and Interstate Commerce Commission and assignment of errors filed by intervening defendant, Regular Common Carrier Conference of American Trucking Associations, Inc.
14. Statement as to jurisdiction submitted by defendants United States and Interstate Commerce Commission and by intervening defendant, Regular Common Carrier Conference of American Trucking Associations, Inc.
15. Orders allowing appeal.
16. Notices pursuant to Rule 12 of the Supreme Court and proof of service thereof.

- 499 17. Citations on appeal and proof of service thereof.
18. Notices to the Attorney General of the State of Indiana and proof of service thereof.
19. This praecipe and any other supplemental praecipe or counterpraecipe which may be filed herein.
20. The Clerk's certificate.

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B. W. La Tourette,
GREGORY M. REBMAN,
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818 Olive Street, St. Louis, Missouri,
*Attorneys for Regular Common Carrier Conference of
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HOWELL ELLIS,
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520 Illinois Building, Indianapolis, Indiana,
Local Counsel.

Receipt of copy of Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed acknowledged this 18th day of September 1944.

FERDINAND BORN,
By ANNA TOTTON,
Attorneys for Hancock Truck Lines, Inc.

[File endorsement omitted.]

500 In the Supreme Court of the United States

October Term, 1944

Stipulation regarding printing of record

Filed Dec. 12, 1944

It is hereby stipulated and agreed, by and on behalf of all parties to the above-styled cause, that in printing the record the Clerk of the Supreme Court may omit Exhibits "E" and "G," being pages 256 through 420, both inclusive, of the transcript as certified by the Clerk of the District Court, said exhibits containing the applications of Globe Cartage Company, Inc., to the Interstate Commerce Commission in Docket No. MC-3339 and 3340, together with certain orders of the Interstate Commerce Commission.

It is further stipulated and agreed that any of the aforesaid parties may refer to any portion of said Exhibits "E" and "G" in brief or argument.

501

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Ferdinand Born,

Attorneys for Appellee.

DECEMBER 1944.

[File endorsement omitted.]

No. 448 and 449, October Term, 1944

Order postponing further consideration of the question of jurisdiction

November 6, 1944

The statements of jurisdiction in these cases having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the cases on the merits.

[Endorsement on cover:] Enter the Attorney General. File No. 48901, 48902. S. Indiana, D. C. U. S. Term No. 448. The United States of America and Interstate Commerce Commission, Appellants vs. Hancock Truck Lines, Inc. Term No. 449. Regular Common Carriers Conference of the American Trucking Associations, Inc., Appellant vs. Hancock Truck Lines, Inc. Filed September 9, 1944. Term No. 448 O. T. 1944, 449 O. T. 1944.

